

89-470 ①

Supreme Court, U.S.

FILED

SEP 18 1989

JOSEPH F. GRANIOLO, JR.  
CLERK

No. 89-

---

In The  
**SUPREME COURT OF THE UNITED STATES**

October Term, 1989

---

**SOUGHNIK KAYZAKIAN,**

Petitioner,

v.

**CHARLES R. BUCK, et al.,**

Respondents.

---

**PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT**

---

William H. Hurd  
Counsel of Record  
2803 McRae Road  
Richmond, Virginia 23235  
(804) 272-2006

John Paul Woodley, Jr.  
Of Counsel  
**WOODLEY, SIMON & WOODLEY**  
1 North Fifth Street, Suite 301  
Richmond, Virginia 23219

Counsel for Petitioner

---

32 p



**QUESTION PRESENTED**

Does the doctrine of res judicata preclude a plaintiff from litigating, in a second lawsuit, claims that did not arise until after the complaint in her first lawsuit was filed, especially when a) the trial court denied her request to add the new claims to her first lawsuit through a supplemental complaint, and b) in so doing, the trial court ruled that those new claims would not be barred by res judicata?

## **PARTIES TO THE PROCEEDING**

Petitioner Soughik Kayzakian was the Plaintiff in the District Court, and the Appellant in the Court of Appeals for the Fourth Circuit.

Respondents Charles R. Buck, Theodore Thornton, Alp Karahasan, Sandra Leichtman, Bruce L. Regan, Thomas F. Krajewski, Jonathon D. Book, Peter T. Pomilo, Irfan S. Esendal, Reza G. Bassiri, Duesdedit Jolbitado, Philip P. Townsend, Randy Roberts, Daniel R. Malone, Jae Park, Ethel Mattegunta, and Springfield Hospital Center, were the Defendants in the District Court, and Appellees in the Court of Appeals.

# TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED. . . . .	i
PARTIES TO THE PROCEEDING. . . . .	ii
OPINIONS AND JUDGMENT BELOW. . . . .	2
JURISDICTION. . . . .	2
STATUTE AND RULE INVOLVED. . . . .	3
STATEMENT OF THE CASE. . . . .	3
REASONS FOR GRANTING THE WRIT. . . . .	9
I. THE DOCTRINE OF <u>RES JUDICATA</u> DOES NOT BAR THE PLAINTIFF FROM FILING A SECOND LAWSUIT TO PURSUE CLAIMS THAT COULD NOT HAVE BEEN ALLEGED IN THE FIRST ACTION. . . . .	12
II. THE PRESENT CASE IS NOT BARRED BY <u>RES JUDICATA</u> BECAUSE THE DISTRICT COURT IN <u>KAYZAKIAN I</u> RULED THAT IT WOULD NOT BE. . . . .	22
CONCLUSION. . . . .	27

# TABLE OF AUTHORITIES

Cases:	Page
<u>Lawlor v. National Screen Service Corp.</u> , 349 U.S. 322 (1955). . . . .	14, 15, 16, 18
<u>New Amsterdam Casualty Company v. Waller</u> , 323 F.2d 20 (4th Cir. 1963), <u>cert. den.</u> 376 U.S. 963 (1964). . . . .	21, 22
<u>Page v. United States</u> , 729 F.2d 818 (D.C. Cir. 1984). . . . .	19, 20, 21
 Statute:	
28 U.S.C. Section 1254(1). . . . .	3
 Rule:	
Rule 15(d), Federal Rules of Civil Procedure. passim	
 Other Authority:	
Restatement (Second) of Judgments, Section 26, Comment C. . . . .	25, 26

**IN THE  
SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM, 1989**

---

**No. 89-**

---

**SOUGHIK KAYZAKIAN,**

**Petitioner,**

**v.**

**CHARLES R. BUCK, ET AL.**

**Respondents.**

---

**PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT**

---

**Soughik Kayzakian petitions for a writ of certiorari  
to the United States Court of Appeals for the Fourth  
Circuit.**

## **OPINIONS AND JUDGMENT BELOW**

The Opinion and Judgment of the United States Court of Appeals for the Fourth Circuit (App. 1a) was entered on December 20, 1988. The Opinion is not reported. The Opinion of the United States District Court for the District of Maryland of September 23, 1987, granting the Respondents' motion to dismiss the complaint (App. 10a), is not reported.

## **JURISDICTION**

The Opinion and Judgment of the United States Court of Appeals for the Fourth Circuit was entered on December 20, 1988. A timely Petition for Rehearing was granted by Order of March 29, 1989. The Order of March 29, 1989, was withdrawn as improvidently granted, and the petition for rehearing was denied by Order dated June 19, 1989 (App.7a).

Jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

### STATUTE AND RULE INVOLVED

Relevant portions of the provisions of Title 42, United States Code and of the Federal Rules of Civil Procedure appear in the Appendix, at 109a.

### STATEMENT OF THE CASE

This case involves the preclusive effect of a dismissal with prejudice of the first of two cases brought by the Plaintiff, Souhik ("Sonia") Kayzakian, against her one-time employer, Springfield Hospital Center, and various other defendants sued in both their individual and official capacities. The first case, styled Kayzakian v. Krajewski ("Kayzakian I"), was filed on October 27, 1982 (App. 16a) and amended immediately thereafter, on November 29, 1982, to make a technical correction in her allegation that

due process was denied. (App. 53a). At the time of filing Kayzakian I, the Plaintiff was still an employee of Springfield Hospital Center; but before the case could be resolved, she was forcibly terminated from her employment in July or August of 1983 (App. 55a) and suffered other new injury.

Desiring to resolve her claims in a single lawsuit, the plaintiff sought to supplement her Complaint to include allegations about her termination and the other injuries she had suffered after October 27, 1982. She also sought to expand the scope of her Complaint so as to allege reprisals against her because of her exercise of free speech with respect to the treatment given an additional thirty four identified patients of Springfield Hospital Center. The district court did not allow her to do so. Said motion and denial were initially made during a telephone conference with the court on October 17, 1982,

and were re-affirmed in hearings on December 9 and 12, 1983; and in a Memorandum and Order dated February 23, 1984. (App. 103a)

The court confirmed the limited nature of the free speech/reprisal issues present in Kayzakian I by granting the Defendants' Motion in Limine to prevent Kayzakian from introducing any evidence concerning Springfield Hospital patients other than Messrs. Bernard Finkelstein and Igor Frank. These were the two patients named in the Kayzakian I complaint whose medical care was the subject of Kayzakian's initial free speech complaints and subsequent reprisals. (App. 26a).

Notwithstanding these decisions, the district court ruled that the matters with which the Plaintiff sought to supplement her complaint would not be precluded by the doctrine of res judicata, and that a second lawsuit would be in order if she so chose. (App. 105a). Wishing to

pursue the matter of her termination, which was the most substantial part of her claims, the plaintiff then advised the court that she did not wish to proceed with Kayzakian I, whereupon the Court issued a Memorandum and Order stating that the case would be dismissed, and reserving judgment on whether said dismissal would be with or without prejudice. In said Memorandum and Order, the court expressly recognized that a new suit would be filed by Kayzakian and granted her the opportunity to do so. (App. 105a).

The plaintiff then did what the district court ruled she had the right to do. She brought a second lawsuit, alleging a wrongful termination as well as other injuries which occurred after the filing of Kayzakian I and/or which she was not allowed to add to her Complaint in that action.

These included the following:

(a.) Defendant Park falsely accused the plaintiff in public of being unable to communicate after October 12, 1982.

(b.) Defendant Book made false statements in the plaintiff's Annual Efficiency Report and gave her an unsatisfactory rating which was unjustified by her work record and performance, on or about January 27, 1983.

(c.) Defendant Roberts harassed the plaintiff in February, 1983 by questioning her in his office and by subjecting her to unusual scrutiny.

(d.) Defendant Roberts instituted novel restrictions on the plaintiff's practice on or about March 14, 1983, and imposed a new and unreasonable requirement on plaintiff to become licensed within one year.

(e.) Defendants Roberts and Malone harassed the plaintiff in the Spring and Summer of 1983 with phony supervisory sessions.

(f.) Defendants Buck and Thornton permitted all these actions and did not properly supervise their subordinates to prevent these actions from taking place.

(g.) The other defendants participated as co-conspirators in these activities, aiding, abetting, procuring and/or encouraging these actions.

(h.) Because the plaintiff reported medical negligence by Springfield Hospital physicians, with respect to the thirty four newly identified patients, the defendants conspired to vilify and systematically harass the plaintiff, in order to force her resignation, and harm her professionally.

(i.) The defendants' actions resulted in the plaintiff's forced resignation from her position in July, 1983.

This case was styled Kayzakian v. Buck ("Kayzakian II"). Thereafter, the district court decided that the dismissal of Kayzakian I was to be with prejudice, and the case of Kayzakian II came before the Court on the defendants' plea of res judicata. (App. 10a). Notwithstanding the previous ruling in Kayzakian I, the District Court ruled that all of those new claims should have been included in the first lawsuit, and that they were now barred by the doctrine of res judicata. (App. 10a-15a). Thus, the plaintiff has been caught between two inconsistent rulings of the District Court, and has been deprived of her day in court.

### REASONS FOR GRANTING THE WRIT

This case presents an important question of federal law which has not been, but should be, decided by this Court. When a plaintiff sues her defendants in a second

lawsuit, on claims not alleged in the first action, three fact patterns are possible:

a) the second case involves facts which occurred before the complaint in the first case was filed.

b) the second case involves facts which did not occur until after judgment was rendered in the first case.

c) the second case involves facts which occurred after the complaint was filed in the first case but before judgment was rendered in that case.

In the first and second fact patterns, the federal doctrine of res judicata is reasonable well-established. In the first pattern, the second lawsuit is barred; in the second pattern, the second lawsuit is allowed. There is, however, no clearly-enunciated federal doctrine governing the third fact pattern.

Under Rule 15(d), Fed. R. Civ. P., a plaintiff may seek permission from the trial court to file a supplemental

complaint setting forth matters which occurred after the initial complaint was filed. Where such permission is granted, the newly-alleged claims are adjudicated along with the initial claims so as to be barred from a second lawsuit by the doctrine of res judicata.

But where the trial court denies permission to supplement the complaint, the status of the plaintiff's new claims is unclear. In the present case, the courts below have ruled that those new matters are barred by the doctrine of res judicata, but these rulings are not supported by precedent or authority. This result is patently unjust in that it unfairly denies a plaintiff her day in court on claims arising after filing a complaint in a civil action, and accords defendants an unwarranted window of immunity from liability for wrongful acts. This petition should be granted so that this Court may clearly establish

that the federal doctrine of res judicata does not require this unjust result.

I. THE DOCTRINE OF RES JUDICATA DOES NOT BAR THE PLAINTIFF FROM FILING A SECOND LAWSUIT TO PURSUE CLAIMS THAT COULD NOT HAVE BEEN ALLEGED IN THE FIRST ACTION.

The trial court ruled that all of the plaintiff's claims were barred by the doctrine of res judicata, even though some of those claims—the ones the plaintiff now seeks to litigate—did not arise until after the complaint is the first case was filed. This ruling is not grounded in sound law or sound policy. Surely a plaintiff is not required to wait for her wrongdoer to do everything he might want to do to her before bringing an action against him. On the contrary, she may bring suit on the acts already committed and the injury already suffered. If additional tortious acts are committed and injury results, she has two choices: (a)

she may move directly to file a separate lawsuit based on the additional claims, or (b) under Rule 15(d), F.R.Civ.P., she may seek to file a supplemental complaint adding the new tortious acts to the suit she has already filed. If this motion is denied—and the trial court has broad discretion on such a motion—she may then bring a separate suit on the additional wrongs. This second course of action is precisely what the plaintiff in this case has sought to do.

This position is supported by an analysis of the three fact patterns into which cases involving a res judicata claim may be grouped. In the first category of cases, plaintiff files a second lawsuit based on facts that had already occurred before the first lawsuit was filed. In this category of cases, the doctrine of res judicata is properly applied. This is not, however, the situation with the case at bar.

In the second category of cases, the plaintiff files a second lawsuit based on facts that did not occur until after

judgment in the first case was entered. In this category of case, the doctrine of res judicata does not apply. The case at bar does not fall within this factual pattern either.

In the third category of case--the one applicable to the case at hand--the plaintiff files a second lawsuit based on facts that occurred after the complaint was filed in the first action but before judgment was rendered in that case. The issue here is whether such a category of case should be treated like the first category and barred by res judicata, or like the second category and not subject to such a ban. An analysis of the reasons supporting the results shows that the third fact pattern is closely akin to the second, and that res judicata should not apply.

A leading case involving the second fact pattern Lawlor v. National Screen Service Corp., 349 U.S. 322 (1955). In Lawlor, the plaintiffs brought an antitrust action in 1942 regarding an alleged monopoly in the distribution

of motion picture advertising materials. This suit was dismissed with prejudice in 1943, pursuant to a pre-trial settlement. In 1949, the plaintiffs, alleging new acts in furtherance of the same monopoly sued on in 1942, brought another antitrust suit against the same defendants and five other conspirators. The district court dismissed the second suit as barred by the doctrine of res judicata, and the court of appeals affirmed this dismissal on grounds that the two suits were based on "essentially the same course of wrongful conduct." 211 F.2d at 936. The Supreme Court granted a writ of certiorari and reversed.

Critical to the Supreme Court's analysis in Lawlor was the fact that the conduct complained of in the second suit was subsequent to the 1943 judgment in the prior suit. 349 U.S. at 328. The Court reasoned that to apply the doctrine of res judicata to bar an action based on these subsequent acts "would in effect confer on them a partial

immunity from civil liability for future violations. Such a result is consistent with neither the antitrust laws nor the doctrine of res judicata." 349 U.S. at 329; emphasis added.

Strong policy considerations dictate that the rule in Lawlor be extended to cover those claims that arise between the initial complaint in the earlier action and the judgment in that action. This is especially true where, as here, the plaintiff sought to add those matters as a supplemental complaint under Rule 15(d), but was denied on objection by the defendant.

At the time of the filing of the complaint in a civil action, the defendant is put on notice of the claims alleged against him. At that time, he can begin to prepare his defense, plan his discovery strategy and secure witnesses for trial. He is entitled to reasonable certainty in the claims against him and would be abused if those claims were constantly multiplied by supplemental allegations

which required new discovery with the attendant trial delay. On the other hand, a plaintiff who files a civil action may suffer further wrongs at the hands of the defendant after the complaint is filed. The pendency of a civil action should not create a zone of immunity within which the defendant may harm the plaintiff with impunity.

Rule 15 (d) provides the district court with discretion to permit a plaintiff to plead the new wrongs in a supplemental complaint, and allows the court to set such terms as are just in permitting the supplemental pleading. There are, of course, many reasons why a court may not wish to allow supplemental pleading in a given action. But to disallow such a pleading should not mean that those unlitigated claims would be barred by res judicata.

In Kayzakian I, the parties had already conducted substantial discovery and litigated several pre-trial motions when the Plaintiff was forced to resign her position on

August 13, 1983. Given the objections of the defendants, the district court was not inclined to allow a new round of discovery or to continue the trial date, and so declined plaintiff's motion. The plaintiff does not take issue here with that decision. But, if the subsequent final judgment in Kayzakiaan I precludes subsequent litigation of those claims which arose after the Kayzakian I complaint was filed, the effect would be to confer on the defendants the same immunity which the Supreme Court condemned in Lawlor.

The better rule is the one stated by the district court on December 3, 1983: the defendants can object to the allowance of the supplemental complaint, but must understand that, if they do and the court forbids supplementation of the complaint, the subsequent judgment is not res judicata for the acts which would have been alleged in the supplemental complaint. The choice rests,

to some degree, with the defendant. He can accede to the supplementation and try all the claims in one action or object and endure the possibility of a later action based entirely on his post-complaint behavior. The refusal of the plaintiff's motion to supplement is consistent with the broad discretion allowed in a trial court under Rule 15(d). But given that decision, the later ruling that those same matters are barred in Kayzakian II is a manifest injustice.

Although there is a paucity of reported cases dealing with the third fact pattern, the cases that are available give added support to the plaintiff's position that the third fact pattern should be treated like the second, thereby allowing the plaintiff to bring a second lawsuit with respect to the allegations which occurred subsequent to the initial complaint in Kayzakian I. The case of Page v. United States, 729 F.2d 818 (D.C. Cir. 1984), filed in 1980, was the second case brought by the plaintiff under the Federal

Tort Claims Act alleging that the Veterans Administration subjected him to harmful drugs during a prolonged course of treatment. The first case, Page I, was filed in 1972 and alleged a harmful course of treatment between 1961 and 1972. This case was dismissed by the trial court in 1973. 729 F.2d at 819, n.6. The second case, Page II, alleged a harmful course of treatment between 1961 and 1980. The trial court dismissed the entire second case on grounds of res judicata. On appeal, the circuit court agreed with the district court that the order dismissing Page I was res judicata as to the Veterans Administration's treatment activities between 1961 and 1972, but overruled the district court's decision insofar as it dismissed Page's claim for treatment activities between 1972 and 1980. As the court noted, "Since Page's 1972 action obviously could not have asserted claims based on facts that were not yet in existence, the dismissal of that action cannot be res

judicata of Page's complaint respecting VA's conduct from 1972 to 1980." 729 F.2d at 820. What is most significant about this ruling is that the claims on which the circuit court allowed Page II to proceed included claims for activities falling between the 1972 commencement of Page I and its 1973 dismissal. Thus, instead of extending the bar res judicata forward to the time of judgment, the circuit court limited the application of the doctrine to the time of the filing of the initial complaint.

The plaintiff's position also finds support in New Amsterdam Casualty Company v. Waller, 323 F.2d 20 (4th Cir. 1963), cert. den. 376 U.S. 963 (1964). In that case, the plaintiff sought to supplement the complaint to include fraudulent transfer of a debtor's property to the defendant which took place after the complaint was filed but before the judgment. This motion was denied, and the circuit court held that the motion should have been granted. In

so ruling, the circuit court was not concerned that the plaintiff's claims to such transfers might be extinguished by that judgment. On the contrary, the court was concerned that the plaintiff would have to commence an entirely new proceeding to litigate those claims. 323 F.2d at 28, 29. If matters which could only be raised by a supplemental complaint were extinguished by the judgment in the first case, the "cost, delay and waste of separate actions" that concerned the court in New Amsterdam would not arise, because any such action would be barred by res judicata.

II. THE PRESENT CASE IS NOT BARRED BY RES JUDICATA BECAUSE THE DISTRICT COURT IN KAYZAKIAN I RULED THAT IT WOULD NOT BE.

The transcript of the pre-trial hearing held in Kayzakian I on December 9, 1983 (App. 16a - 31a) clearly shows that the district court was aware of the attempts by the plaintiff to supplement her complaint to include her forced termination and the other matters occurring after

the complaint in Kayzakian I was filed. At the insistence of the defendants, who complained that adding those allegations would require further discovery and possible trial delay, the district court denied the plaintiff's request to supplement her complaint. In so doing, however, the district court cautioned the defendants that those matters not included in Kayzakian I would not be barred from future litigations by res judicata:

THE COURT: No, I do not think that this -  
- this is not a case in which Dr. Kayzakian has alleged wrongful discharge. This is a case in which Dr. Kayzakian has complained that she has been discriminated against.

Unless she is complaining that she was discriminated against because of something that she said in connection with those conditions, the answer is that I will grant the Motion in Limine.

MR. MARR: Well, Your Honor --

THE COURT: Let's move, Mr. Marr.

MR. MARR: Okay, but you've overlooked a very important detail that's in the record that I want to bring your attention to.

THE COURT: What is that?

MR. MARR: Suit was filed before she terminated her employment at Springfield and one of the things she wants to do is amend her suit to include her forced termination as a retaliation.

THE COURT: And the answer is that that motion to amend has been denied.

MR. MARR: I understand that, Judge, but I just wanted to put everything in context.

THE COURT: If you want to bring a separate lawsuit with regard to those matters, I think, Ms. Meredith you have to understand that those would not be res judicata.

(App. 25a, 26a; emphasis added.)

This is a rule of simple fairness. The defendants could have accepted without objection the plaintiff's supplementing of her complaint, and settled the entire matter at one time. They elected not to do so, and the district court went along with their election. Now,

however, having enjoyed the benefit of that ruling, the defendants seek to enjoy as well the benefit of precluding litigation of these issues in a separate action just as if they had been included in Kayzakian I from the beginning. This is not fair and should not be permitted.

Indeed, even if these were not supplemental matters, the decision by the district court to reserve the plaintiff's right to bring a second action should be binding. The reservation by a court of a plaintiff's right to bring a second action is squarely addressed in the official Comment to Section 26 of the Restatement (Second) of Judgments:

A determination by the court that its judgment is "without prejudice" (or words to that effect) to a second action on the omitted part of the claim, expressed in the judgment itself, or in the findings of fact, conclusions of law, opinion, or similar record, unless reversed or set aside, should primarily be given effect in the second action.

Comment C; emphasis added.

Taking the court at its word, the plaintiff elected not to go forward with the trial of Kayzakian I, even though, by so doing, she risked a dismissal with prejudice of the claims in Kayzakian I. It was a risk she was willing to take because the most important concern to her was the issue of her termination; she knew that she could still litigate that issue in a second lawsuit because the district court had told her so.

Unfortunately, when Kayzakian II came before the district court for a ruling on the Defendants' motion to dismiss, the trial court overlooked its earlier ruling about res judicata. Thus, the plaintiff has been caught between two inconsistent rulings and, as a result, has been deprived of her day in court. This injustice can only be corrected by granting her petition for writ of certiorari.

**CONCLUSION**

The Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

**WILLIAM H. HURD**

Counsel of Record  
2803 McRae Road  
Richmond, Virginia 23235  
804/272-2006

**JOHN PAUL WOODLEY, JR.**  
Of Counsel

**WOODLEY, SIMON & WOODLEY**  
1 North Fifth Street, Suite 301  
Richmond, Virginia 23219  
804/783-8282

89-470

Supreme Court, U.S.  
FILED

SEP 18 1989

No. 89-

JOSEPH F. DEAN, JR.  
CLERK

In The  
**SUPREME COURT OF THE UNITED STATES**

October Term, 1989

**SOUGHIK KAYZAKIAN,**

Petitioner,

v.

**CHARLES R. BUCK, et al.,**

Respondents.

**APPENDIX TO  
PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT**

William H. Hurd  
Counsel of Record  
2803 McRae Road  
Richmond, Virginia 23235  
(804) 272-2006

John Paul Woodley, Jr.  
Of Counsel  
WOODLEY, SIMON & WOODLEY  
1 North Fifth Street, Suite 301  
Richmond, Virginia 23219

Counsel for Petitioner

111426



UNPUBLISHED

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

---

No. 87-2187

---

SOUGHIK KAYZAKIAN, ('Sonia')

Plaintiff-Appellant

v.

CHARLES R. BUCK, Sued in his individual capacity Former Secretary of Health; THEODORE THORNTON, Sued in his individual as well as official capacity, Secretary, Department of Personnel; ALP KARAHASAN, Sued in his individual as well as official capacity, Acting Director, Department of Health and Mental Hygiene; SANDRA LEICHTMAN, Sued in her individual as well as official capacity Chief Phychologist, Mental Hygiene Administration; BRUCE L. REGAN, Sued in his individual as well as official capacity, Director of Psychiatric Education and Training, Mental Hygiene Administration, Department of Health and Mental Hygiene; SPRINGFIELD HOSPITAL CENTER; THOMAS F. KRAJEWSKI, Sued in his individual as well as official capacity, Superintendent, Springfield Hospital Center; JONATHAN D. BOOK, Sued in his individual as well as official capacity, Clinical Director,



## TABLE OF CONTENTS

	Page
Opinion of the United States Court of Appeals for the Fourth Circuit, December 20, 1988. . . . .	1a
Decision of the United States Court of Appeals for the Fourth Circuit on Petition for Rehearing, June 19, 1989 .	7a
Memorandum and Order of the United States District Court for the District of Maryland, September 23, 1987. . . . .	10a
Exerpts from Transcript of Proceedings in <u>Kayzakian v. Krajewski</u> . . . . .	16a
Complaint in <u>Kayzakian v. Krajewski</u> . . . .	34a
Amendment to Complaint in <u>Kayzakian</u> <u>v. Krajewski</u> . . . . .	53a
Complaint in <u>Kayzakian v. Buck</u> . . . . .	55a
Memorandum and Order of the United States District Court for the District of Maryland, February 23, 1984. . . . .	103a
Statutes and Rule Exerpts:	
Title 42, United States Code . . . . .	109a
Rule 15(d), Federal Rules of Civil Procedure . . . . .	109a

Springfield Hospital Center;  
 PETER T. POMILO, Sued in his  
 individual capacity; IRFAN S.  
 ESENDAL, Sued in his individual  
 as well as official capacity,  
 Director, Martin Gross Unit,  
 Springfield Hospital Center;  
 REZA G. BASSIRI, Sued in his  
 individual as well as official  
 capacity, Director, City Division,  
 Springfield Hospital Center;  
 DUESDEDIT JOLBITADO, Sued in his  
 individual as well as official  
 capacity, Chair, Hospital Privil-  
 eging Committee, Springfield  
 Hospital Center; PHILIP P. TOWNSEND,  
 Sued in his individual as well as  
 official capacity, Personnel Admin-  
 istrator, Springfield Hospital Center;  
 RANDY ROBERTS, Sued in his individual  
 as well as official capacity, Director,  
 Phychological Services, Springfield  
 Hospital Center; DANIEL R. MALONE,  
 Sued in his individual as well as  
 official capacity, Staff Psychologist,  
 Springfield Hospital Center; JAE PARK,  
 Sued in his individual as well as  
 official capacity, Physician, Spring-  
 field Hospital Center; ETHEL MATTEGUNTA,  
 Sued in her individual as well as  
 official capacity Physician, Spring-  
 field Hospital Center

#### Defendants - Appellees

---

Appeal from the United States District Court for the  
 District of Maryland, at Baltimore. Frank A. Kaufman,  
 Senior District Judge. (C/A No. 84-974)

---

Submitted: September 30, 1988    Decided: December 20,  
 1988

---

Before HALL, PHILLIPS, and MURNAGHAN, Circuit Judges.

Soughik Kayzakian, Appellant Pro Se. John Joseph Curran, Jr., David E. Beller, Daniel J. O'Brien (OFFICE OF THE ATTORNEY GENERAL OF MARYLAND) for Appellees.

---

PER CURIAM:

Soughik ("Sonia") Kayzakian appeals from the district court's order dismissing her claims for relief under 42 U.S.C. §§ 1983, 1985, 1986, 1988, and 1997(d).

Appellant contends that Judge Kaufman improperly failed to recuse himself and that the doctrine of res judicata should not have been applied to bar her claims. Our review of the record and the district court's opinion discloses that this appeal is without merit.

Under 28 U.S.C. §144, when a party files a timely and sufficient affidavit that the judge has a personal bias against him or for an adverse party, the judge is required to recuse himself. Kayzakian motion and affidavit, however, were not sufficient. Appellant bases her charge of bias only upon Judge Kaufman's familiarity with her prior case and the pre-trial decisions he made against her. Where the source of the bias is not shown to be

"outside the record or a related proceeding or [related to the judge's] experience on the bench," it is not sufficient basis for disqualification. Shaw v. Martin, 733 F.2d 304, 308 (4th Cir. 1984) (emphasis added); United States v. Carmichael, 726 F.2d 158, 160 (4th Cir. 1984).

Therefore, Judge Kaufman did not abuse his discretion when he did not recuse himself, and this argument by appellant presents no meritorious grounds for appeal.

Appellant also argues the doctrine of res judicata was improperly applied to bar her claims. She contends there is no identity of cause of action or privity between the parties in the present case and her prior suit, Kayzakian v. Krajewski, No. 84-1460 (4th Cir.) (unpublished), cert. denied, 479 U. S. 1018, 93 (1986).

Analysis of the two cases shows that in both suits appellant alleges the same conspiracy, seeks the same relief, and relies on the same laws or statutes. This is more than adequate to establish identity of cause of action. Nash City Bd. of Educ. v. Biltmore Co., 640 F.2d 484 (4th Cir.), cert. denied, 454 U.S. 878 (1981). Merely stating additional facts in the complaint or bringing the claims pursuant to additional statutory authority, as

Kayzakian does in her present claim, does not change the nature of the cause of action. Id. at 487-88.

Appellant names as defendants in this case eight new individuals in addition to the nine defendants named in her prior suit. She contends there is no identity of parties between the two actions with respect to these eight new defendants. In order to have identity of parties between two actions, however, the parties need not be exactly the same. Strangers to prior litigation can plead estoppel based on privity. Humphreys v. Tann, 487 F.2d 666, 571 (6th Cir. 1973), cert. denied, 416 U. S. 956 (1974); Zdanok v. Glidden Co., 327 F.2d 944, 954-56 (2d Cir.) cert. denied, 377 U.S. 934 (1964); Ligon v. State of Maryland, 448 F. Supp. 935 (D.C. Md. 1977); (citing Rachal v. Hill, 435 F.2d 59, 61-62 (5th Cir. 1970)).

Privity exists where a plaintiff attempts to relitigate the same claim by naming different governmental entities and employees as defendants. Mears v. Town of Oxford, Md., 762 F.2d 368, 371 n.3 (4th Cir. 1985); Miller v. United States, 438 F. Supp. 514, 520-21 (E.D. Pa. 1977). The eight new defendants are all employees, co-workers, or administrators of the same governmental bodies as the defendants listed in the prior action and are therefore in

privity with them. Also, where, as in the present case, the defendants' involvement in the original conspiracy was known to the plaintiff during the pendency of the previous action, and the complaint in this second action does not allege new facts, then privity will be found and res judicata will apply. Manego v. New Orleans Board of Trade, 773 F.2d 1,5-7 (1st Cir. 1985), cert. denied, 475 U.S. 1084 (1986).

Because the facts and legal contentions are adequately presented in the materials before the Court, appellant's motion for leave to file a formal brief is denied. We dispense with oral argument because the dispositive issues recently have been decided authoritatively.

**AFFIRMED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

FILED

No. 87-2187

JUN 19 1989

SOUGHIK KAYZAKIAN, ('Sonia')

Plaintiff-Appellant,

versus

Charles R. Buck, Sued in his individual capacity, Former Secretary of Health; Theodore Thornton, Sued in his individual as well as official capacity, Secretary, Department of Personnel; Alp Karahasan, Sued in his individual as well as official capacity, Acting Director, Department of Health and Mental Hygiene; Sandra Leichtman, Sued in her individual as well as official capacity, Chief Psychologist, Mental Hygiene Administration; Bruce L. Regan, Sued in his individual as well as official capacity, Director of Psychiatric Education and Training, Mental Hygiene Administration, Department of Health and Mental Hygiene; Springfield Hospital Center; Thomas F. Krajewski, Sued in his individual as well as official capacity, Superintendent, Springfield Hospital Center; Jonathon D. Book, Sued in his individual as well as official capacity, Clinical Director, Springfield Hospital Center; Peter T. Pomilo, Sued in his individual capacity; Irfan S. Esendal, Sued in his individual as well as official capacity, Director, Martin Gross Unit, Springfield Hospital Center; Reza G. Bassiri, Sued in his individual as well as official capacity, Director, City Division, Springfield Hospital Center; Duesdedit Jolbitado, Sued in his indivi-

dual as well as official capacity, Chair, Hospital Privileging Committee, Springfield Hospital Center; Philip P. Townsend, Sued in his individual as well as official capacity, Personnel Administrator, Springfield Hospital Center; Randy Roberts, Director, Psychological Services, Springfield Hospital Center; Daniel R. Malone, Sued in his individual as well as official capacity, Staff Psychologist, Springfield Hospital Center; Jae Park, Sued in his individual as well as official capacity, Physician, Springfield Hospital Center; Ethel Mattegunta, Sued in her individual as well as official capacity Physician, Springfield Hospital Center.

Defendants - Appellees

---

ORDER

---

Upon consideration of the supplemental briefs filed in response to the order granting rehearing in this appeal, the court has concluded that the petition for rehearing was improvidently granted, and should have been denied.

It is accordingly ORDERED that the court's order of March 29, 1989, granting rehearing of this appeal is withdrawn as improvidently granted, and the petition for rehearing is hereby DENIED.

Entered by the direction of Judge Phillips with the  
concurrences of Judge Hall and Judge Murnaghan.

FOR THE COURT:

/S/John M. Greacen  
Clerk



UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

SOUGHNIK ('SONIA') KAYZAKIAN \*

V. \* CIVIL NO. K-84-974

CHARLES R. BUCK, ET AL. \*

MEMORANDUM AND ORDER

In Kayzakian v. Krajewski, et al., Civil No. K-82-3141, plaintiff's complaint was dismissed by this Court with prejudice on March 20, 1984. Thereafter, that dismissal was affirmed by the United States Court of Appeals for the Fourth Circuit. Kayzakian v. Krajewski, et al., unpublished slip op. No. 84-1460 (4th Cir. June 2, 1986). A writ of certiorari was then denied by the Supreme Court. \_\_\_ U.S. \_\_\_, 93 L.Ed.2d 722 (1986),

For the reasons set forth by defendants in support of their motion to dismiss, defendants' said motion is hereby granted. In the within case, defendants correctly raise the application of the doctrine of res judicata. That defense can be raised in support of a motion to

dismiss. Thomas v. Consolidation Coal Co., 380 F.2d 69, 75 (4th Cir.), cert. denied, 389 U.S. 1004 (1967).

### FACTS

Plaintiff's allegations in both cases are fully and adequately set forth in defendants' memorandum filed in support of their August 7, 1986 motion to dismiss.

### DISQUALIFICATION

The undersigned Judge of this Court, despite questions raised by plaintiff, has no doubt about his ability to consider and determine fairly and impartially the issues in this case. Plaintiff's dissatisfaction with the results of the litigation in Civil No. R-82-3@4@ or with the handling of this case are no basis for disqualification of the said undersigned Judge.

### APPOINTMENT OF COUNSEL

Plaintiff, in the first case, Civil No. K-82-3141, was represented by several competent attorneys who represented her diligently. Herein, in the second case, plaintiff basically restates her claims in the earlier case. Under the circumstances, none of plaintiff's allegations herein present any legal or other issues which lead this

Court to believe that it should appoint new counsel for plaintiff.

### LAW

In order for a case to be barred by res judicata,

the essential elements are., (1) a final judgment on the merits in an earlier suit, (2) an identity of the cause of action in both the earlier and the later suit, and (3) an identity of parties or their privies in the two suits.

Nash County Board of Education v. Biltmore Co., 640 F.2d 484, 486 (4th Cir.), cert. denied, 454 U.S. 878 (1981). Plaintiff's within second action falls squarely within that test. To begin with, plaintiff's first action, Civil No. K-82-3141, was dismissed with prejudice. Thus, a final judgment on the merits was entered in that case. See Lawlor v. National Screen Service Corp., 349 U.S. 322, 327 (1955); Angel v. Bullington, 330 U.S. 183, 190 (1947); Gambocz v. Yelencsics, 468 F.2d 837, 840 (3d Cir. 1972).

Second, plaintiff's cause of action in both suits is identical. In each case, plaintiff alleges the same set of operative facts, namely, the same retaliatory scheme of harassment. See J. Aron and Company, Inc. v. Service Transportation Co., 515 F. Supp. 428, 445-47 & n.23

(D.Md. 1981) (Murray, J.) (discussing what constitutes operative facts). While it is true that plaintiff's within complaint alleges certain facts not contained in the complaint filed in the prior action, those additional factual allegations are part of the same transaction, and present no distinct legal claim. Moreover, those additional facts were known, or should have been known, by plaintiff before judgment was entered in the prior action. Accordingly, plaintiff is therefore barred from asserting them now. See Lawlor, 349 U.S. at 328; Manego v. Orleans Board of Trade, 773 F.2d 1, 5 (1st Cir. 1985), cert. denied, 106 S. Ct. 1466 (1986) (res judicata bars relitigation of issues which either were raised could have been raised in a prior action); J. Aron and Company, Inc., 515 F. Supp. at 447 (mere shift in proffered evidence is not enough) (quoting Restatement of Judgments §61.1(a) comment b (Tentative Draft No. 5, March 10, 1978)). Similarly, it is irrelevant that in her second action plaintiff claims a right to relief under statutes, theories or approaches not relied upon in the first action. Manego, 773 F.2d at 6 (different legal theory is not tantamount to different transaction); Nash County, 640 F.2d at 488.

Finally, there is an "identity of parties or their privies." See Nash County, 640 F.2d at 493-94 & n.17. The plaintiff in both actions is the same. All of the defendants named in the first case are defendants named in the second case along with eight additional defendants not named in the first action (Buck, Thornton, Karahasan, Leichtman, Roberts, Malone, Park and Mattegunda). These eight new defendants are in privity with the defendants named in both cases, i.e., all defendants in the second case are alleged to have been involved in the harassment scheme complained of in both suits. Plaintiff has lodged no claims in the second case which are different in essence or in substance against any of those additional defendants which were not alleged in the first action. Accordingly, plaintiff's within action against the original defendants and also the additional defendants is barred. See Manego, 773 F.2d at 6 (defendants considered in privity when their involvement in transaction was known by Plaintiff at the time of the pendency of the prior suit and complaint in second action did not allege new facts with regard to them); Gambocz, 468 F.2d at 842 (additional defendants considered in privity when in first action they were

alleged to have participated in original conspiracy even though they were not named parties); see also Croatan Books, Inc. v. Baliles, 583 F. Supp. 857, 862-63 (E.D.Va. 1984) (agents of same government not acting in an individual capacity are in privity with each other).

For the foregoing reasons, the within case, i.e., Civil No. K-84-974, is hereby dismissed with prejudice.

The Clerk is directed to send copies hereof to plaintiff and to counsel of record. It is so ORDERED, this 23rd day of September 1987.

/S/Frank A. Kaufman  
Senior United States District Judge

[412]

TRANSCRIPT OF PROCEEDINGS

THE COURT: Hello.

MR. MARR: Hi, Your Honor.

THE COURT: Mr. Marr is on. And who else is on? Ms. Meredith?

MS. MEREDITH: Yes, Your Honor.

MR. MARR: Yes, Your Honor.

THE COURT: All right. Now this is in Kayzakian against Krajewski, Civil Number K82-3141.

I note the protective order granted by Judge Ramsey on 11/25/83. I certainly would have granted it if I had been here.

Ms. Meredith has written a letter to the Court on 12/5/83 concerning Mr. Marr's attempt to amend the complaint and reopen discovery.

I think Ms. Meredith's position is totally sound and Mr. Marr's motion to amend and reopen discovery is denied.

When Mr. Marr came into this case, he was told that there had been extensive proceedings before he came in which had involved counsel who preceded him and that I

did not expect to permit a lot of new positions to be taken and a lot of extensions to be granted.

Mr. Marr seems to have forgotten that many times and has been already granted, frankly, much more leeway than

[413]

I believe probably in retrospect should have been granted to him.

Mr. Marr in his 12/5/83 letter talks about amendments to the pleadings. Frankly, I do not even think there is a formal motion to amend but I would treat the formal motion just as I have indicated in any event.

In the pretrial order, and I note we are already at the pretrial order stage, at pages 14 and 15, Mr. Marr sets forth his views with regard to the amendment required by the pleadings. Well, the complaint is not amended.

In the pretrial order, the parties have not set forth any additional stipulations, although defendants have requested plaintiffs to stipulate to certain facts.

I cannot require that the parties stipulate to anything and I can understand that Mr. Marr may have some problem with his client in working out stipulations.

If in good faith and with all due efforts Mr. Marr cannot work out those stipulations, I will permit the defendants to specifically request admissions from plaintiff and plaintiff can have that same opportunity so that those requests for admissions will tie both parties -- and the responses to them, which will have to be very prompt, will have to tie the parties down.

Now, I would suggest that counsel get together and make it perfectly clear to their respective clients that if [420] time.

MS. MEREDITH: Yes, Your Honor. My concern is that my list of witnesses to some extent depends on what way the Court rules on my motion in limine.

THE COURT: Let's take your motion in limine up first now.

I am going off the record for just a minute. Please stay on the line and talk among yourselves for a minute. I need to interrupt for just a second.

(Proceedings briefly suspended.)

THE COURT: Hello?

MR. MARR: Hi, Judge.

MS. MEREDITH: Yes.

\*THE COURT: All right, we are back on the record.

Now, let's take the motion in limine first. That motion was filed December 5th. It has not been responded to, nor was Mr. Marr required to respond to it by today's date.

What is your position with regard to it, Mr. Marr?

MR. MARR: Your Honor, I believe that there is sufficient evidence of record at this particular juncture to cause the COurt to take a wait and see attitude about it.

I believe that we will prove, if not by direct evidence, by circumstantial evidence --

THE COURT: Now, let me interrupt.

MR. MARR: There's a bunch of categories in the [421]

motion in limine but I believe that our evidence will show that in fact the evidence that we seek to have introduced that defendants seek to exclude will in fact be relevant, but I must confess that it must really abide a play-out in the record.

THE COURT: Ms. Meredith, I have not had a chance, frankly, since this document came into the Clerk's office on the afternoon of Monday, December 5th, these long documents -- you filed a 40-some page supporting document -- I have not had a chance to get into these matters.

MS. MEREDITH: Yes, Your Honor.

THE COURT: Now, the other motions are a little easier to look at and I have glanced through them, but this long one I have not had a chance to work on.

What is it all about? Capsulize it for me in a second or two.

MS. MEREDITH: Well, Your Honor, the affidavit --

THE COURT: Ms. Meredith, you have got to move that -- move in closer to that telephone and talk about three times as loud or I have got to get you to come over here.

MR. MARR: Your honor, in all fairness to Ms. Meredith, I placed this call and I think she's coming through my phone to you so I guess she does have to speak up a little louder.

[422]

THE COURT: If it gets to be burdensome, Ms. Meredith, we will have to reset the call or --

MS. MEREDITH: That's fine, Your Honor. I'll shout. Okay? Can you hear me know?

THE COURT: I hear you fine. It does not seem like you are shouting. Now you are fine.

MS. MEREDITH: Okay. Well, I am shouting. I'll continue to shout.

MR. MARR: I'll agree with that.

THE COURT: Go ahead.

MS. MEREDITH: Your Honor, the motion in limine was filed as a result of my receipt of the affidavit in opposition to my motion for summary judgment, in which a number of new issues which had not previously been raised were set forth.

THE COURT: All right, what are they? Capsulize them, please.

MS. MEREDITH: All right. Well, first of all is evidence concerning general medical conditions and general evidence of neglect at Springfield Hospital Center, things like the fact that there are urine and feces on the floor and the place smells bad and just very general allegations of medical neglect and of indifference

to quality of patient care and quality of patient life at the hospital, which are not the substance, even if true, of Dr. Kayzakian's alleged

[423]

protected speech.

THE COURT: But Dr. Kayzakian is talking about more than alleged protected speech. She is talking about alleged retaliatory action having been taken against her because of certain things that she has complained about.

Is that correct, Mr. Marr?

MR. MARR: That's correct, Your Honor, and that's what the evidence will show.

THE COURT: All right. Now, let's keep our answers down to yes or no or something.

MR. MARR: All right. Yes, Judge.

THE COURT: All right, so we can move here now.

Now, I believe -- and, Mr. Marr, I do not want -- I want total candor from you of the kind I have gotten in every case you have ever been in, criminal or civil.

MR. MARR: Thank you, Judge.

THE COURT: But I --

MR. MARR: You'll have it this time too, I can assure you.

THE COURT: I believe that I am right when I say that almost from the start your client has contended that she was retaliated against because she made certain complaints about the way the hospital was operated.

MR. MARR: Correct.

MS. MEREDITH: Can I just --  
[424]

THE COURT: No, Ms. Meredith, no, not till I call on you.

MS. MEREDITH: Okay.

THE COURT: Mr. Marr, did you, however, or did your client, however, before now ever raise these kinds of complaints?

I recall specifically that she said that the caliber of treatment that was given to patients by staff members was deficient and that she was penalized and subjected to harassment and so forth because she pointed out those difficulties or alleged difficulties or alleged failures on the part of the staff.

But I do not recall one word about any allegations of retaliation because of the kind of physical conditions of the hospital that have just been indicated.

MR. MARR: Your Honor, she's still not alleging that she's been retaliated against because of physical conditions in the hospital, that is, the feces and the urine and the odor and the atmosphere.

THE COURT: No, you miss, you miss, you miss totally, Mr. Marr, what I am talking about.

MR. MARR: I'm sorry, Judge. I thought I grasped your point.

THE COURT: The point is that if I understood it from the start, what Dr. Kayzakian was saying was that she

[425]

made certain complaints and she stated certain opinions with regard to the kind of treatment that was given to patients and that she was retaliated against because she did make these criticisms and statements and so forth.

MR. MARR: Correct, Your Honor. I'd only add the phrase "treatment and lack of treatment."

THE COURT: All right, I would buy that.

MR. MARR: All right.

THE COURT: Now, the only relevance that I can see in the physical conditions that you have -- that have been referred to by Ms. Meredith as being in the realm of possible evidence that you want to produce is that I do not see how such evidence would be relevant or material in the slightest unless it related to complaints made by Dr. Kayzakian and alleged retaliation for such complaints.

Now, if there is any other relevance and materiality in such evidence, relevancy or materiality in such evidence, you can tell me. Otherwise, I think Ms. Meredith is right.

MR. MARR: Well, I think that it would be relevant for the jury to understand the general background and conditions in which she was working and her efforts in regard to improving patient care. I think it would be relevant in that sense also.

THE COURT: No, I do not think that this -- this [426]  
is not a case in which Dr. Kayzakian has alleged wrongful discharge. This is a case in which Dr. Kayzakian has complained she has been discriminated against.

Unless she is complaining that she was discriminated against because of something that she said in connection with those conditions, the answer is that I will grant that motion in limine.

MR. MARR: Well, Your Honor --

THE COURT: Let's move, Mr. Marr.

MR. MARR: Okay, but you've overlooked a very important detail that's in the record that I want to bring your attention to.

THE COURT: What is that?

MR. MARR: Suit was filed before she terminated her employment at Springfield and one of the things she wants to do is amend her suit to include her forced termination as a retaliation.

THE COURT: And the answer to that that motion to amend has been denied.

MR. MARR: I understand that, Judge, but I just wanted to put everything in context.

THE COURT: If you want to bring a separate lawsuit with regard to those matters, I think, Ms. Meredith, you have to understand that those would not be res judicata.

If you do not want them in this lawsuit because,

[427]

as you have pointed out, bringing them in will lead to another round of discovery, will lead to longer -- will lead to trial delay and so forth, I think I have to go along with you.

But those are allegations which, as you point out, have not been stated in the case by Mr. Marr.

And, Mr. Marr, obviously you cannot bring in evidence, in support of the amended complaint, of something that would be in an amended complaint if the amended complaint is not being permitted to be filed and if the evidence is not in support of allegations that are in the complaint that is before the Court.

MR. MARR: Your Honor, the problem is those things happened after the complaint was filed. That's why they're not in the complaint.

THE COURT: And when did she leave the employ?

MR. MARR: She left the employ August -- well, actually she didn't go back to work after her examination on the 11th and 12th.

THE COURT: Of what?

MR. MARR: Of July 1983, but the complaint was filed in 1982, I believe in --

THE COURT: Yes, I know, and you have had plenty of opportunity between July '83 and December or late November or early December of 1983 to seek to amend the complaint.

[428]

MR. MARR: I did that and the Court said no in a phone conference.

THE COURT: You did that -- that phone conference took place in November, did it not?

MR. MARR: Your Honor, I don't remember the date, I'd have to check my records, but I think it was earlier than November. I think it was back in September.

MS. MEREDITH: In October.

MR. MARR: Well, whenever it was.

THE COURT: No, it makes a lot of difference. We will tell you when it was in a second.

MR. MARR: Okay.

MS. MEREDITH: It was October 17th, Your Honor.

THE COURT: All right, and I said no on October 17th for the same reason I am saying no again now.

The answer is that this case has had enough ups and downs and I told you when you came in, Mr. Marr, that we were not going to have this kind of a performance.

So the answer is that the motion is limine with regard to those physical conditions is going to be granted.

\*\*\*\*

[441].

MS. MEREDITH: The next one, Your Honor --

THE COURT: And by the way, let's stop worrying about opening statements, in view of Mr. Marr's undertaking.

MS. MEREDITH: Yes, Your Honor.

The next one concerns evidence about patients other than Bernard Finkelstein and Igor Frank, who are the two patients that were referenced in the complaint.

THE COURT: Mr. Marr, unless you tie them in in some way, you cannot get into them.

MR. MARR: Well, I intend to tie them in, Your Honor.

THE COURT: How are you going to tie them in?

MR. MARR: It's similar act evidence.

THE COURT: The answer is no. It is not similar act evidence whatsoever. You are making allegations of discrimination --

MR. MARR: Well, may I correct my statement, Judge? What I mean is that it wasn't just because of these two patients about which Dr. Kayzakian complained. We contend the proof will show she complained about a number of patients whom she considered to be improperly treated and in effect was a thorn in the side of the physicians and in an effort to silence her, they engaged in this campaign of harassment.

MS. MEREDITH: Your Honor, that's an attempt to amend the complaint.

[442]

MR. MARR: No.

THE COURT: Exactly. That is an attempt to amend the complaint through the back door or side door and the answer is no.

That is exactly what you wanted to do when you asked to amend the complaint. That is the same amendment proposal over again. Let's stop trying to have end runs, Mr. Marr.

Next, Ms. Meredith.

MR. MARR: Okay, so I can't put in evidence about other people?

THE COURT: No, sir, and the record will show, Mr. Marr, that you had more than sufficient opportunity to raise these allegations and you were told specifically when you came in the case to raise them and raise them quickly.

MR. MARR: The record will show that?

THE COURT: Yes, it will.

MR. MARR: All right. Well, I didn't learn about them, Judge, until I filed the response to the summary judgment motion.

THE COURT: That is your problem with your client.

MS. MEREDITH: Your Honor, the next point --

THE COURT: And, Mr. Marr, if you did not, then your client obviously did not cooperate with you or your predecessor counsel --

\*\*\*\*

[454]

TRANSCRIPT OF PROCEEDINGS

THE COURT: All right, we are on the record.  
Hello.

MS. MEREDITH: Hello. Yes Judge Kaufman.

THE COURT: Ms. Meredith, Mr. Marr is sitting here.

MR. MARR: Hi, Kathy.

MS. MEREDITH: Hi, Mike.

THE COURT: And my law clerk is here, Ms. Meredith, and the court reporter is here.

Now, just one second.

(Discussion off record between the Court and the law clerk).

THE COURT: Now, there are a number of motions before the Court, one of which is a summary judgment motion and Mr. Marr is going to submit an affidavit, I believe, or certainly he is going to have to do something in connection with the pending summary judgment motion.

I think I ruled on just about everything else that is open, except that with regard to the pretrial evidentiary rulings, I think that I expressed only tentative views and I will finalize them at the time of the hearing.

I will also put on the record at that time that I have denied Mr. Marr's motion to amend the complaint and to reopen discovery and that I did that the other day on

the record when we last talked, which was on the 9th of December.

\*\*\*\*

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

SOUGHIK ('SONIA') KAYZAKIAN,  
7410 Village Road, Apt. 21  
Sykesville, Md. 21784

Plaintiff

v.

THOMAS F. KRAJEWSKI, Sued in  
his individual as well as official  
capacity  
Superintendent  
Springfield Hospital Center  
Sykesville, Md. 21784

JONATHAN D. BOOK, Sued in his  
individual as well as official  
capacity  
Clinical Director  
Springfield Hospital Center  
Sykesville, Md. 21784

PETER T. POMPILO, Sued in his  
individual capacity  
4314 Roland Springs Drive  
Baltimore, Md. 21210

IRFRAN S. ESENDAL, Sued in his  
individual as well as official  
capacity  
Director, Martin Gross Unit  
Springfield Hospital Center  
Sykesville, Md. 21784

REZA G. BASSIRI, Sued in his  
individual as well as official  
capacity  
Director, City Division  
Springfield Hospital Center  
Springfield, Md. 21784

DEUSDEDIT JOLBITADO, Sued in

his individual as well as official  
 capacity  
 Chair, Hospital Privileging  
 Committee  
 Springfield Hospital Center  
 Sykesville, Md. 21784

PHILIP P. TOWNSEND, Sued in his  
 individual as well as official  
 capacity  
 Personnel Administrator  
 Springfield Hospital Center  
 Sykesville, Md. 21784

SPRINGFIELD HOSPITAL CENTER  
 Sykesville, Md. 21784

BRUCE L. REGAN, Sued in his  
 individual as well as official  
 capacity  
 Director of Psychiatric Education  
 and Training  
 Mental Hygiene Administration  
 Department of Health and  
 Mental Hygiene  
 4th Floor, 201 W. Preston Street  
 Baltimore, Md. 21201

Defendants

## COMPLAINT OF VIOLATION OF CONSTITUTIONAL RIGHTS

### NATURE OF CLAIMS

1. Plaintiff, a state psychologist, seeks a  
 declaratory judgment, restoration of full professional  
 privileges, retroactive promotion with backpay and  
 benefits, a permanent injunction, compensatory and

punitive damages, attorney's fees and costs for violation of her First, Fifth and Fourteenth Amendment United States Constitutional rights by defendant state officials of the employing state mental hospital, as provided by 42 U.S.C. 1983, 1985 and Maryland tort law. Plaintiff seeks relief for reprisals taken against her by Hospital officials because she reported medical neglect of patients, which reporting is required by law.

### JURISDICTION

2. The jurisdiction of this Court is invoked pursuant to 42 U.S.C. 1983, 1985, 28 U.S.C. 1331, 1332 and 1343. This is also a suit for declaratory judgment authorized and instituted pursuant to 28 U.S.C. 2201 and 2202. The amount in controversy exceeds \$10,000 exclusive of interest and costs.

The Court has pendent jurisdiction of plaintiff's tort claims, which arise from the same nucleus of operative facts as the federal claims.

3. The jurisdiction of this Court is invoked to secure protection of and to redress deprivation of rights secured by the Constitution and laws of the United States, as guaranteed by 42 U.S.C. 1983 and 1985, as

well as the common law tort concepts recognized in Maryland.

### PARTIES

4. The plaintiff is a psychologist employed by Springfield Hospital Center, which is a state mental hospital. She is an American citizen domiciled in Maryland, who is of Armenian national origin. She has a Ph.D. in Psychology and six years experience as a psychologist.

5. The defendant officials, except Bruce Regan and Peter Pompilo, are currently officials at the Springfield Hospital Center, and are believed to be domiciliaries of Maryland. They are sued in their official capacities for purposes of equitable relief under 42 U.S.C. 1983 and 1985, and for possible tort damages liability under Maryland law. They are also sued in their individual capacities for purposes of compensatory and punitive damages under 42 U.S.C. 1983 and 1985 and Maryland tort law. Defendants Krajewski, Book, Esendal, Bassiri and Jolbitado are psychiatrists.

6. Defendant Peter Pompilo is a psychologist who was Director of Psychological Services (plaintiff's

department) until his retirement in June 1982. He is sued in his individual capacity; his is a domiciliary of Maryland.

7. Defendant Bruce Regan is Director of Psychiatric Education and Training of the Maryland state Mental Health Administration. He is sued both in his official and individual capacity. He is believed to be a domiciliary of Maryland.

8. Defendant Springfield Hospital Center (hereinafter "the Hospital") is a state mental hospital primarily for the care of chronic mental patients. It is sued for purposes of equitable relief not barred by the 11th Amendment.

#### STATEMENT OF FACTS

9. Plaintiff began work as a Psychologist I at the Hospital on August 20, 1980.

10. Based on her qualifications, plaintiff was promoted to II about two weeks after she began work, upon the recommendation of defendant Pompilo, then head of her department.

11. Plaintiff was approved for full professional privileges (i.e. right to practice at the Hospital without supervision) in December 1980 by the Hospital

Privileging Committee, upon the positive recommendation of defendant Pompilo and the department privileging committee. Defendant Krajewski approved the privileging

12. Defendant Pompilo certified at the time of plaintiff's privileging in December 1980 that she had the knowledge and skills necessary to provide psychological therapy.

13. Plaintiff's job duties at the Hospital were to perform psychological diagnoses, to conduct individual, group and family psychotherapy, to act as a consultant to treatment teams comprised of somatic physicians, psychiatrists, psychologists, social workers and nurses, and to supervise interns.

14. Plaintiff satisfactorily completed the required probationary period for new employees in February 1981 and was appointed to a permanent position as a Psychologist.

15. Plaintiff was appointed or elected to eight Hospital committees prior to August 1981. She was recommended by Hospital officials and approved for membership in the Maryland Psychological Association during this time.

16. Plaintiff formulated a grant proposal for training doctoral psychology students in the treatment of chronic mental patients at the Hospital. The proposal was approved and funded, and the grant was administered by plaintiff, who trained psychology doctoral students at Springfield until June 1982.

17. From June to August 1981 plaintiff requested medical examination and treatment for two of her patients who had serious physical problems. Hospital physicians declined to do more than cursory diagnostic work, or to pursue the matter further. They concluded the patients did not require further new treatment.

18. Plaintiff contacted the relatives of one patient mentioned in ¶17 above, to secure outside medical consultation. Plaintiff's efforts led to surgery in July 1981 which corrected the condition.

19. As for the second patient, plaintiff was unable to persuade the relevant Hospital physician to do more than superficial examination and testing. When the patient's symptoms worsened, plaintiff and the case social worker informed the patient's relatives. The plaintiff herself met with the Hospital superintendent, defendant Krajewski, on August 31, 1981 and reported the matter

of the deficient medical care of both patients, which reporting was required of staff by law, under Maryland Code Article 59, §52-A. Plaintiff requested defendant Krajewski's intervention on behalf of the second patient. Defendant Krajewski summoned defendant Book, the Hospital's Clinical Director and second-in-charge. They informed the patient's relatives that the medical care of the patient was adequate and that further testing could be harmful. They indicated a private physician could be consulted by the relatives, if they so desired. The relatives chose to follow defendant Krajewski and Books' advice and not seek further testing. On September 21, 1981, in view of the patient's deteriorating condition, plaintiff furnished her written recommendations to defendant Krajewski, describing his symptoms and recommending further examination and testing.

Finally, in response to plaintiff's requests, defendant Krajewski ordered a University of Maryland Medical School consultation. These physicians ordered immediate surgery, which was performed at their facility. The patient was near death when he received treatment at the University of Maryland in early October 1981.

20. Beginning in September 1981, the defendants conspired to vilify and harass plaintiff for having reported the medical negligence of hospital physicians, and thus force her resignation.

21. Between September 1981 and the present time, events in the ongoing campaign of harassment include the following:

a. accusations by defendant Book in September 1981 that plaintiff had "problems" in relating to Hospital physicians; Dr. Book sent carbon copies of these accusations, to defendants Esendal, Pompilo, Krajewski, and Dr. Snyder, at the Psychology Department Privileging Committee. (NOTE: upon this basis plaintiff received an unsatisfactory performance appraisal in February 1982, see below, j.1.)

b. vandalizing of plaintiff's car in the Hospital parking lot on October 6, 1981.

c. denial by defendants Pompilo and Esendal of 336 hours compensatory time on October 30, 1981.

d. repeated requests since November 2, 1981 by defendants Book, Pompilo and Bassiri for a

written schedule of her activities whereas such requests were not made of others.

e. lewd remarks and offensive touching by defendant Bassiri during the time November 1981 to January 1, 1982.

f. counseling for sick leave usage, on December 9, 1981 by defendants Esendal and Pompilo.

g. restriction on December 10, 1981 by defendant Esendal, then plaintiff's supervisor, of the usual professional privileges. He forbade plaintiff to 1) treat patients unless they were specifically referred to her by a psychiatrist; 2) to read or make entries in patient medical charts except for those patients referred to her by psychiatrists; 3) to enter certain wards.

h. threats by defendant Esendal on January 7, 1982 that "they would get rid of her," and that members of another hospital staff who had tried to 'change the system', like her, had been murdered. He also gave her a press article, "Allen Finally Takes the Hint," about the resignation of an "errant aide who was expendable."

Plaintiff feared for her life as a result of defendant Esendal's threats, which caused her to become ill. She requested an immediate transfer away from him.

i. a lecture by defendant Bassiri, then plaintiff's second-line supervisor, on February 4, 1982, on the inadvisability of 'whistle-blowing.'

j. reprisals against plaintiff for related First Amendment activities in 1982, as follows:

1. On February 17, 1982 plaintiff filed a written complaint under the Maryland Classified Employees Disclosure Act (codified at Art. 64A, §12G(a), Maryland Code). The complaint alleged harassment by Hospital officials for her communications regarding the two seriously ill patients, as described above. Copies of the complaint were supplied to the Hospital administration, including some of the defendant officials. On or about February 25, 1982 defendants Pompilo, Esendal and Book, meeting together, composed an unsatisfactory performance appraisal of plaintiff, which was issued to her.

2. in late May 1982 plaintiff testified before a Finance Committee of the Maryland legislature, on behalf of an amendment strengthening protection of

state employees who made disclosures under the Disclosure Act. On June 22, 1982 defendant Pompilo recommended revocation of plaintiff's full privileges and imposition of special supervision for three months on all aspects of plaintiff's professional practice and relationships. On that date, Pompilo also denied plaintiff a promotion due in August 1982.

k. establishment on April 22, 1982 by defendant Bassiri, then plaintiff's immediate supervisor, of a special leave authorization procedure for her.

l. attempted suspension by Philip Townsend, the Hospital personnel chief, on May 12, 1982, at defendant Bassiri's instigation.

m. Bassiri and Book pressured psychiatrist Mattengunta to constantly criticize plaintiff from May to September 1982.

n. repeated attempts by defendants Krajewski and Book from August 1982 to the present, to impose special supervision of plaintiff prior to a decision by the Hospital Privileging Committee, which had jurisdiction of the matter.

o. revocation by defendant Regan in late August or early September 1982 of funding for plaintiff's

second grant to train externs, which had been approved by Regan for funding, as of August 8, 1982. Revocation occurred within one week after defendant Krajewski was informed of the approval and funding.

p. threats by defendant Krajewski in August 1982 that he would punish plaintiff if she failed to disclose information of patient negligence or abuse, when plaintiff reported a patient death which had just occurred, involving possible medical negligence.

q. removal in September 1982 of sliding bolts in plaintiff's private office by C-2 ward staff, so that the office could be entered by patients or staff at any time. It is believed this action was instigated by some of the defendants, to distress plaintiff and to foment trouble between plaintiff and ward staff.

r. revocation of plaintiff's full privileges in October 1982 by defendants Jolbitado, chair of the Hospital Privileging Committee, in the absence of a rationale or evidence supporting defendant Pompilo's recommendation against full privileges, and despite recommendation by the Psychology Department Privileging Committee that plaintiff's full privileges be continue.

s. service on plaintiff of administrative notices, in May and September 1982 by two armed hospital police officers, in the middle of group therapy sessions conducted by plaintiff, at the direction of defendant Townsend.

t. October 4, 1982 Defendant Krajewski ordered plaintiff to attend a staff meeting convened specially by him for plaintiff to answer charges against her; defendant Krajewski told plaintiff she had better say the charges were untrue, "or else." He denied plaintiff's request for a representative of her choice or an attorney at the meeting, and threatened her with suspension if she did not attend. Plaintiff attended the meeting, held October 6, 1982, and became ill and was absent from work for more than two weeks as a result of the emotional distress she suffered.

22. In taking their actions, each of the defendants was aware of the plan to harass plaintiff for exercise of her constitutional and state rights of speech, and agreed to participate.

### CLAIMS

23. In doing the things and acts above complained of while clothed in the authority of state

officials, defendants acted under color of state law. They maliciously engaged in a scheme and conspiracy designed and wrongfully intended to deny and deprive plaintiff of rights guaranteed by the First Amendment (freedom of speech), the Fifth Amendment (liberty clause --right to pursue a profession) and/or the Fourteenth Amendment (equal protection based on plaintiff's sex and national origin). In so doing, they violated 42 U.S.C 1983 and 1985.

Plaintiff has suffered grievous emotional, physical, professional and pecuniary damage as a direct result of defendants' actions. She is entitled to equitable relief and monetary damages under 1983 and 1985.

24. In doing the things and acts above complained of defendants breached their duty to plaintiff to administer the Hospital without inflicting mental distress upon her, negligently or intentionally. As a result of these actions and statements, motivated by wrongful intent, plaintiff has variously feared for her life, her job and her professional reputation. She has suffered severe mental distress and physical dysfunction as a direct result of defendants' course of conduct.

Plaintiff is entitled to monetary damages under Maryland tort law for this harm.

25. In pursuing the above course of conduct, defendants have knowingly engaged in a conspiracy to deprive plaintiff of rights guaranteed by the U. S. Constitution and by the Maryland Classified Employee Disclosure and Confidentiality Protection Act, Art. 64A §12G of the Maryland Code. Defendants have thus breached their duty to plaintiff to refrain from violating her rights under federal and state law. Plaintiff has suffered emotional, physical and pecuniary harm as a direct result. Plaintiff is entitled to monetary damages under Maryland tort law for the defendants' conduct based upon wrongful intentions.

26. By their foregoing actions, the defendants have knowingly interfered with plaintiff's contractual employment rights with the Hospital and State, causing plaintiff to lose her full privileging status, her promotion, and causing an unsatisfactory performance appraisal to be issued about her, jeopardizing her employment.

27. The words, gestures and touching by defendant Bassiri which caused plaintiff great emotional distress, constitute tortious assault and battery; defendant

Bassiri is also included in the other claims, for these and other cited actions by him.

RELIEF

WHEREFORE, plaintiff respectfully requests that this Court:

1. Enter a judgment that the acts and practices complained of herein are in violation of 42 U.S.C. 1983, 1985, and the U.S. Constitution, Maryland Code, ART. 64A, and plaintiff's rights under Maryland tort law.
2. Permanently enjoin defendants and their successors in office from harassing plaintiff, or taking reprisals for exercises of her rights and duties.
3. Order defendants to retroactively promote plaintiff to Psychologist III as of August 20, 1982, with backpay and all benefits, and to restore her full professional privileges.
4. Order defendant Regan to restore funding to plaintiff's grant (\$8,000 for grant "Psychology Training in Chronic Wards") as of the next academic year.
5. Order the defendants to allow plaintiff 336 hours of compensatory time, or to pay her in lieu thereof, if the time cannot be granted.

6. Order the defendants to purge all Hospital records of mention of defendants' illegal actions, statements, and their negative results, including the February 1982 performance appraisal.

7. Order defendant individuals jointly and/or severally to pay plaintiff \$5,000,000.00 in compensatory and punitive damages.

8. Order individual defendants and/or defendant Hospital to pay plaintiff's attorney fees and costs, under 42 U.S.C. 1988 and the Court's equitable powers, in the interest of justice.

9. Grant plaintiff such additional relief as the Court may deem just and proper.

**PLAINTIFF DEMANDS TRIAL BY JURY.**

Respectfully submitted,

Charles P. Lamasa  
Resident Counsel for  
Plaintiff  
Suite 301  
1 E. Lexington St.

Baltimore, Maryland 21202  
Telephone: (301) 727-4131

Bridget R. Mugane  
Attorney for Plaintiff  
416 D. St. S.E.  
Washington, D.C. 20003

Telephones: (202) 547-2121  
(301) 596-0175

VERIFICATION

I have read the foregoing Complaint and verify, under penalty of perjury, that it is correct, to the best of my knowledge, information and belief.

**SOUGHIK KAYZAKIAN**  
Plaintiff



UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

SOUGHNIK ("SONIA") KAYZAKIAN, )

Plaintiff )

v. )

THOMAS F. KRAJEWSKI, Sued in  
his individual as well as official  
capacity, etc. et al., )

Defendants )

AMENDMENT TO COMPLAINT

Pursuant to F.R.C.P. Rule 15a, plaintiff hereby amends her complaint as follows: Paragraph 23 is to be replaced by the following:

23. In doing the things and acts complained of while clothed in the authority of state officials, defendants acted under color of state law. They maliciously engaged in a scheme and conspiracy designed and wrongfully intended to deny and deprive plaintiff of rights guaranteed by the First Amendment (freedom of speech) and the Fifth Amendment (due process liberty clause--right to pursue a profession--and property clause) of the U.S. Constitution, as incorporated in the 14th Amendment due process clause, and/or the Fourteenth Amendment (equal protection based on plaintiff's sex

and/or national origin). In so doing, they violated 42 U.S.C. 1983 and 1985.

Plaintiff has suffered grievous emotional, physical, professional and pecuniary damage as a direct result of defendants' actions. She is entitled to equitable relief and monetary damages under 1983 and 1985.

Respectfully submitted,

<b>CHARLES P. LAMASA</b>	<b>BRIDGET R. MUGANE</b>
Resident Counsel	Attorney for Plaintiff
Suite 301	416 D St. S.E.
1 E. Lexington St.	Washington, D.C. 20003
Baltimore, MD 21202	Telephones: (202) 547-2121
Telephone: (301) 727-4131	(301) 596-0175

### CERTIFICATE OF SERVICE

We hereby certify that a copy of the foregoing Amendment to Complaint was served on counsel for defendants, Judy Sykes and Daniel J. O'Brien, at 300 W. Preston St., Baltimore, Md. 21201 by certified mail, this 24th day of November 1982.

<b>CHARLES P. LAMASA</b>	<b>BRIDGET R. MUGANE</b>
Resident Counsel for	Attorney for Plaintiff
Plaintiff	

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

SOUGHIK ('SONIA') KAYZAKIAN  
7410 Village Road, Apt. 21  
Sykesville, Maryland 21784

Plaintiff

v.

CHARLES R. BUCK,  
Sued in his individual capacity  
Former Secretary of Health  
3400 Spruce Street  
Philadelphia, Pennsylvania 19104

THEODORE THORNTON,  
Sued in his individual as well as  
official capacity  
Secretary  
Department of Personnel  
301 West Preston Street  
Baltimore, Maryland 21201

ALP KARAHASAN,  
Sued in his individual as well as  
official capacity  
Acting Director, Department of  
Health and Mental Hygiene  
201 West Preston Street  
Baltimore, Maryland 21201

SANDRA LEICHTMAN,  
Sued in her individual as well as  
official capacity  
Chief Psychologist  
Mental Hygiene Administration  
201 West Preston Street  
Baltimore, Maryland 21201

**BRUCE L. REGAN,**  
 Sued in his individual as well as  
 official capacity  
 Director of Psychiatric Education  
 and Training  
 Mental Hygiene Administration  
 Department of Health and Mental  
 Hygiene  
 4th Floor  
 201 West Preston Street  
 Baltimore, Maryland 21201

**SPRINGFIELD HOSPITAL CENTER**  
 Sykesville, Maryland 21784

**THOMAS F. KRAJEWSKI,**  
 Sued in his individual as well as  
 official capacity  
 Superintendent  
 Springfield Hospital Center  
 Sykesville, Maryland 21784

**JONATHAN D. BOOK**  
 Sued in his individual as well as  
 official capacity  
 Clinical Director  
 Springfield Hospital Center  
 Sykesville, Maryland 21784

**PETER T. POMPILO,**  
 Sued in his individual capacity  
 4314 Roland Springs Drive  
 Baltimore, Maryland 21210

**IRFAN S. ESENDAL,**  
 Sued in his individual as well as  
 Official capacity  
 Director, Martin Gross Unit  
 Springfield Hospital Center  
 Sykesville, Maryland 21784

**REZA G. BASSIRI,**  
 Sued in his individual as well as  
 official capacity  
 Director, City Division

Springfield Hospital Center  
Sykesville, Maryland 21784

**DUESDEDIT JOLBITADO,**  
Sued in his individual as well as  
official capacity  
Chair, Hospital Privileging  
Committee  
Springfield Hospital Center  
Sykesville, Maryland 21784

**PHILIP P. TOWNSEND,**  
Sued in his individual as well as  
official capacity  
Personnel Administrator  
Springfield Hospital Center  
Sykesville, Maryland 21784

**RANDY ROBERTS,**  
Sued in his individual as well as  
official capacity  
Director, Psychological Services  
Springfield Hospital Center  
Sykesville, Maryland 21784

**DANIEL R. MALONE,**  
Sued in his individual as well  
as official capacity  
Staff Psychologist  
Springfield Hospital Center  
Sykesville, Maryland 21784

**JAE PARK,**  
Sued in his individual as well as  
official capacity  
Physician  
Springfield Hospital Center  
Sykesville, Maryland 21784

**ETHEL MATTEGUNTA,**  
Sued in her individual as well as  
official capacity  
Physician

Springfield Hospital Center  
Sykesville, Maryland 21784

Defendants

## COMPLAINT OF VIOLATION OF CONSTITUTIONAL RIGHTS

### NATURE OF CLAIMS

1. Plaintiff, a psychologist, seeks injunctive relief and compensatory and punitive damages, attorneys' fees and costs for violations of her First, Fifth and Fourteenth Amendment United States Constitutional rights by defendant state officials and pursuant to 42 U.S.C. Sections 1983, 1985, 1986, 1988 1997 (d) and Maryland Common Law. Plaintiff also seeks relief for reprisals taken against her by officials because she reported medical neglect of patients as required by law.

### JURISDICTION

2. The jurisdiction of this court is invoked pursuant to 28 U.S.C. Sections 1331, 1332 and 1343 for redress of 42 U.S.C. Sections 1983, 1985, 1986, 1988 and 1997(d) claims.

3. This court also has pendent jurisdiction over plaintiff's common law tort claims which arise from the same nucleus of operative facts as the federal claims.

### PARTIES

4. The Plaintiff is a psychologist who was employed at the Springfield Hospital Center, Sykesville, Maryland, from August 20, 1980 until August 12, 1983. She is an American citizen domiciled in Maryland, who is of Armenian national origin. She has a Ph.D. in Psychology and six and one-half years experience as a Clinical Psychologist.

5. Defendant Charles Buck is the former Secretary of Health, State of Maryland, who is believed to have retired from the Maryland State system in 1983. He is sued in his individual capacity, and is believed to be a domiciliary of Pennsylvania.

6. Defendant Theodore Thornton is the Secretary of Personnel, State of Maryland. He is sued in his individual and official capacities. He is domiciliary of Maryland.

7. Defendant Alp Karahasan, a psychiatrist, is the Acting Director, Department of Mental Hygiene Administration, State of Maryland. He is sued in his

individual as well as official capacities. He is a domiciliary of Maryland.

8. Defendant Sandra Leichtman, is the Chief Psychologist, Mental Hygiene Administration, State of Maryland. She is sued in her individual as well as official capacities. She is a domiciliary of Maryland.

9. Defendant Bruce Regan, a psychiatrist, is Director of Psychiatric Education and Training Mental Hygiene Administration, State of Maryland. He is sued in his individual as well as official capacities. He is a domiciliary of Maryland.

10. Defendant Springfield Hospital Center (hereinafter "the Hospital") located in Sykesville, Maryland, is a mental institution. It is sued for purposes of equitable relief and money damages not barred by the Eleventh Amendment.

11. Defendant Krajewski, a psychiatrist, is the Superintendent of the Springfield Hospital Center. He is sued in his individual as well as official capacities. He is a domiciliary of Maryland.

12. Defendant Jonathan Book, a psychiatrist, is the Clinical Director of the Springfield Hospital Center. He

is sued in his individual as well as official capacities. He is a domiciliary of Maryland.

13. Defendant Peter Pompilo is a psychologist who was Director of Psychological Services (Plaintiff's department) at the Springfield Hospital Center until his retirement in June of 1982. He is sued in his individual capacity. He is a domiciliary of Maryland.

14. Defendant Irfan Esendal, a psychiatrist, was the Director of Martin Gross Unit, the Springfield Hospital Center. He is sued in his individual as well as official capacities. He is a domiciliary of Maryland.

15. Defendant Reza Bassiri, a psychiatrist, is the Director of the Baltimore City Division, the Springfield Hospital Center. He is sued in his individual as well as official capacities. He is a domiciliary of Maryland.

16. Defendant Deusdedit Jolbitado, a psychiatrist, was the Chairman of the Hospital Privileging Committee. He is sued in his individual as well as official capacities. He is a domiciliary of Maryland.

17. Defendant Philip Townsend is the Personnel Administrator at the Springfield Hospital Center. He is sued in his individual as well as official capacities. He is a domiciliary of Maryland.

18. Defendant Randy Roberts, a psychologist, is the Director, Psychological Services at the Springfield Hospital Center. He is sued in his individual as well as official capacities. He is a domiciliary of Maryland.

19. Defendant Daniel Malone is a Staff Psychologist at the Springfield Hospital Center. He is sued in his individual as well as official capacities. He is a domiciliary of Maryland.

20. Defendant Jae Park is a psychiatrist at the Hospital. He is sued in his individual as well as official capacities. He is a domiciliary of Maryland.

21. Defendant Ethel Mattegunta is a psychiatrist at the Hospital. She is sued in her individual as well as official capacities. She is a domiciliary of Maryland.

### STATEMENT OF FACTS

22. The Plaintiff is a Clinical Psychologist by education, training and experience. Her life and professional endeavors have been devoted to quality mental health care, particularly: (a) for the care of "chronically mentally ill" within our society; (b) the

prevention of "mental illness" and unnecessary institutionalization of individuals; and (c) the deinstitutionalization of individuals where appropriate.

23. The Plaintiff earned her Doctor of Philosophy (Ph.D.) in Clinical Psychology at the George Peabody College for Teachers, Nashville, Tennessee in May of 1978, in a Psychology program approved by the American Psychological Association (APA). Plaintiff also received her Master of Arts (M.A.) degree from George Peabody College for Teachers majoring in Education (Guidance and Counseling) in May of 1973. During her academic years at Peabody, Plaintiff received a Peabody Tuition Grant, and served as a Research Assistant at the Institute on Youth and Social Development, the John F. Kennedy Center for Research on Education and Human Development, Nashville, Tennessee, during 1973 and 1974.

24. The Plaintiff was hired as Clinical Psychologist at the Western State Psychiatric Hospital, a state mental institution, in Bolivar, Tennessee, in September of 1975. During her two-week orientation to the hospital, the Plaintiff learned of widespread

patient abuse and neglect at that hospital. Meanwhile, she was offered the position of Director of Mental Retardation Unit among other hospital-wide responsibilities. However, the Plaintiff also learned that in accepting the position and responsibilities, she would be denied the rightful "authority" to stop the abuse and neglect of the patients, and that she was in fact warned in advance not to even attempt to get involved in this respect or she would be terminated and would be blocked from obtaining a license to practice psychology. The plaintiff, thus refusing to be a party to patient abuse and neglect, immediately resigned from her position.

25. The Plaintiff was employed at the Meharry Medical College, The Community Mental Health Center, Nashville, Tennessee, as Clinical Psychologist/Instructor from March of 1976 until June of 1978. She was specifically hired to upgrade the quality of mental health care for the Center clients and was also involved in the education of medical students and psychiatric residents.

26. In the summer of 1980, Plaintiff applied to the Springfield Hospital Center, Sykesville, Maryland, for the position of Staff Psychologist. She was interviewed by Defendant Peter Pompilo, Ph.D., Director, Psychological

Services; William Snyder, Ph.D., Staff Psychologist and Acting Director, Psychological Services in Defendant Pompilo's absence; Defendant Irfan Esendal, M.D., Director, Martin Gross Unit; Defendant Reza Bassiri, M.D., Director, Baltimore City Division; William Butterbaugh, M.D., Assistant Director, Martin Gross Unit and Ward Psychiatrist; Rena Whittaker, LCSW, Supervisor, Social Services, Martin Gross Unit; Judith Nave, R.N., Nursing Supervisor; Lorraine Arnold, R.N., Nursing Supervisor; and Arthur Campo, M.D., Ward Psychiatrist.

27. On August 20, 1980, Plaintiff commenced her employment at the Springfield Hospital Center as a Staff Psychologist I and two weeks later her classification was adjusted to Staff Psychologist II in and for the Martin Gross Unit and Cottage A of the Baltimore City Division. She was specifically hired to upgrade the quality of mental health care for the chronically mentally ill patients. Her assignment at the Martin Gross Unit continued until February 22, 1982, when she was transferred to the Baltimore City Division, Convalescent Cottages C-1 and C-2. Plaintiff's assignment at Cottage A, Baltimore City Division was terminated in January of

1981 by Defendant Pompilo because he wanted her to assume additional supervisory duties, particularly in the female continued care area. Thus, in January of 1981, Defendant Pompilo assigned Plaintiff to assume supervisory duties at the Warfield Continued Care Unit, known as the female chronic wards. While assigned to the Martin Gross Unit, Defendant Esendal was Plaintiff's immediate supervisor. While assigned to the Baltimore City Division, Defendant Bassiri was Plaintiff's immediate supervisor. Meanwhile, Defendant Pompilo supervised Plaintiff in his capacity as Director of Psychological Services.

28. Plaintiff's duties and responsibilities from August 20, 1980, until July 7, 1983 were as follows:

a. Clinical Administrative Responsibilities at Martin Gross Unit and Cottage A: Plaintiff served as a member of the administrative team at the Martin Gross Unit having been appointed to do so by Defendant Esendal. As such, she provided direct input in decisions concerning program development, evaluation, and other administrative issues concerning quality of patient care. She also assisted the wards in developing guidelines for patient admission and referral. She served as the

resource-person/consultant to treatment teams to enhance the quality of life for patients in the wards. She was appointed as a member of the treatment teams conducting individual, group, and family therapy sessions. She also provided consultation services at the Mental Retardation Administration (MRA) staffings, psychiatric case conferences, and Individual Treatment Plan (ITP) team meetings.

b. Responsibilities in the Department of Psychology:

(1) Plaintiff supervised the following three (3)

Psychology intern/externs:

(a) From September of 1980, until June of 1981, Plaintiff was assigned by Defendant Pompilo to supervise Andrew Claiborne, M.S. (now Ph.D.), a Psychology Intern, in conducting individual, group, family therapy, and consultation services at Cottage C-1 in the Baltimore City Division, and the Martin Gross D and E wards. Plaintiff received excellent mid-year and final evaluations from her supervisee, dated February 25, 1981 and July 31, 1981.

(b) From January of 1981 through July of 1981, Plaintiff was assigned by Defendant Pompilo to

supervise Silvia Petuchowski, M.A., a Psychology Extern from the University of Maryland, in individual, group, family therapy, and consultation services at the Warfield Continued Care Unit, D and H wards. Plaintiff received an excellent evaluation from her supervisor on August 5, 1981.

(c) From September of 1981 until July of 1982, Plaintiff supervised Beth Dzaman, M.A. (now Ph.D.), a Psychology Extern from the University of Maryland selected for the Plaintiff's grant, entitled "Psychology Training in Chronic Wards." This supervision, which was both clinical and administrative, was conducted in the Martin Gross Unit. Plaintiff's final supervisory duty regarding Dr. Dzaman was to serve as a member of her Dissertation Committee as appointed by the University of Maryland for the purpose of evaluating her dissertation, serving as the Springfield resident expert on the topic of the dissertation. Plaintiff received an excellent evaluation from her supervisee dated February 18, 1982. Dr. Dzaman also wrote a letter of recommendation, dated April 15, 1982, to Dr. Leon Rosenberg, a member of the Psychology Training Advisory Board (TAB), Department of Health & Mental

Hygiene, urging the Board to recommend Plaintiff's grant for a second-year funding.

(2) In addition, Plaintiff was responsible for psychological service to hundreds of patients hospital-wide.

(3) Plaintiff wrote the Psychology grant and administered it from September of 1981 until July of 1982. She also prepared, wrote, and administered a workshop entitled "Psychology Training in Chronic Wards" which was presented at the Springfield Hospital Center on June 28, 1982. The grant which was a unique psychology training program had proven successful and met the goals of the Department of Health and Mental Hygiene Five Year Plan. Thus, it was recommended for a second-year funding by TAB to the Department of Health and Mental Hygiene. Shortly after this recommendation the funding was approved in August of 1982.

(4) Plaintiff attended scheduled departmental staff meetings.

(5) Plaintiff participated in seminars and conferences for continuing education purposes,

c. Hospital wide Responsibilities: Committees:

Plaintiff was appointed to serve on eight (8) hospital-wide committees as follows:

(1) Plaintiff was appointed by Defendant Pompilo to the Patient Assessment Form Committee chaired by Defendant Book, and served on this committee from January of 1981 through October of 1981. The purpose of this committee was to ensure that the Springfield Hospital Center had an appropriate record keeping system in an effort to obtain accreditation from the Joint Commission on Accreditation of Hospitals (JCAH).

(2) Plaintiff was appointed by Defendant Esendal to the Quality Assurance Medical Audit Committee chaired by Defendant Jolbitado, in September of 1980, and occupied this position until February of 1982 when she was transferred from the Martin Gross Unit. The purpose of this committee was to establish goals for the Martin Gross Unit and to ensure that steps were taken to meet the goals in a relatively objective fashion, all in an effort to obtain accreditation from the JCAH.

(3) In December of 1980, Defendant Esendal appointed Plaintiff to the Committee on Sharing Staff with

the Community which was chaired by Defendant Bassiri. The purpose of this committee was to assist in the development of community centers for the treatment of mentally ill patients by assuring that appropriate staff would share time and duties at the various community centers. This particular committee was also established to assist the Springfield Hospital Center in obtaining its much needed accreditation.

(4) In July of 1981, Plaintiff was elected by the Psychology Department staff to membership on the Psychology Department Credentialing/Privileging Committee. Her membership lasted for a full term until June of 1983. The purpose of the committee was to ensure that the individuals who were hired by the State Personnel Office to practice psychology at the Springfield Hospital, did indeed have the appropriate credentials to perform their staff duties. This was also another effort to assist the hospital in obtaining accreditation.

(5) Plaintiff was selected to teach a hospital orientation class to orient new employees to the Hospital on July 31, 1989. Dr. William Snyder and Mr. Robert Klohr wrote separate letters of appreciation to Plaintiff on July 31, 1981, for her efforts and cooperation.

(6) Plaintiff was appointed by Defendant Krajewski to serve on the Employee Third Step Grievance Panel on August 31, 1981.

(7) Plaintiff was appointed by Defendant Pompilo and Dr. Richard Halpin, Director of Psychology Internship Program, to the Committee on Psychology Intern Selection in January of 1981.

(8) Based on the recommendation of the American Federation of State, County, and Municipal Employees (AFSCME), Plaintiff was appointed to the Affirmative Action Committee by Defendant Krajewski on January 5, 1982.

d. Duties and Responsibilities at Convalescent Cottages C-1 and C-2 : Plaintiff was transferred to the Baltimore City Division, Cottages C-1 and C-2 on February 22, 1982, under the supervision of Defendant Bassiri. Her duties and responsibilities were drastically reduced from the responsibilities mentioned in a, b, and c above, to direct clinical service to patients, attending ITPs, departmental staff, and once a month Affirmative Action Committee meetings. This drastic reduction of duties and responsibilities was part of the retaliations by the Defendants as more fully set forth in paragraph 54.

29. In October of 1980, the Plaintiff as well as almost the entire Psychology Department at that time, voluntarily requested supervision in the area of neuropsychological testing.

30. Plaintiff was approved for full professional privileges (i.e. right to practice at the Hospital without supervision) in December of 1980 by the Springfield Hospital Privileging Committee, upon the positive recommendation of Defendant Pompilo and the Psychology Department Privileging Committee. Defendant Krajewski also approved the privileging.

31. Defendant Pompilo certified at the time of Plaintiff's privileging in December 1980 that she had the knowledge and skills necessary to provide the full range of psychological services.

32. Plaintiff performed all her duties and responsibilities as described in paragraph 28 above, in compliance with the Ethical Principles of Psychologists, adopted by the American Psychological Association's Council of Representatives on January 24, 1981. She likewise followed the requirements of the Federal and Maryland Law to report to appropriate authorities

medical negligence and/or abuse of residents confined in institutions.

33. Plaintiff satisfactorily completed the State requirement of a six (6) month probationary period for new employees in February of 1981 and was appointed to a permanent position as Staff Psychologist II.

34. In November of 1981, Plaintiff was recommended by Defendant Pompilo and James McTamney, Ph.D., Assistant Director, Department of Education, Springfield Hospital Center, and was approved for membership in the Maryland Psychological Association (MPA).

35. The entire time that plaintiff was employed at the Springfield Hospital Center, she noted many instances of patient abuse, lack of proper medical care, and even what was believed to be deaths of questionable cause, throughout the hospital. Plaintiff also was informed of such deaths that had occurred prior to her employment at the Hospital, and of widespread patient neglect and abuse at most of the Maryland state institutions.

36. During her employment at Springfield Hospital Center, the Plaintiff became aware of individuals who

had been systematically harassed and subjected to isolation and silencing techniques by different officials, had been labeled as paranoid, had been eventually terminated from their jobs, and had their careers destroyed, because those individuals had sanely and dutifully reported abuse and violations of law. During 1980-81, Plaintiff was approached by one of the Defendants to conspire with other officials in an effort to terminate two Hospital Psychologists who were potentially sources of "embarrassment" to the state. Plaintiff unequivocally declined to participate in the conspiracy. However, officials continued their efforts toward the termination of those two psychologists, and eventually succeeded in their unlawful acts. Plaintiff herself became concerned that she too would suffer various forms of reprisals after she was warned that she would be harassed and harmed if she continued her efforts to prevent patient abuse and neglect.

37. In the course of her employment at the Springfield Hospital Center, the Plaintiff observed that certain patients were being warehoused by the Hospital

Administration (Defendants herein) without adequate medical diagnosis and treatment.

38. Plaintiff learned that patients arrived at the Hospital either voluntarily or as a result of judicial commitment. They were admitted to the Admission Wards of the Hospital, and unless released from the Hospital, were assigned to one of many "cottages" which occupied the Hospital grounds. After living in a "cottage", a patient was either released from the Hospital or, if considered to be chronically ill, was assigned to the Martin Gross Unit.

39. Plaintiff further observed that a large segment of the population at the Martin Gross Unit were those individuals who were mentally retarded. Plaintiff was aware that the mentally retarded had no place in the Martin Gross Unit or in any mental institution in the State. However, through misdiagnosis and neglect, many persons not mentally ill, were confined to many of the wards at the Martin Gross Unit. They were improperly administered psychotropic medication, "thorazine cocktails," and otherwise mistreated as mentally ill.

40. During the Plaintiff's tenure, there was an effort to release these individuals from the Martin Gross Unit

and the Hospital as mandated by law. Although some progress was made in accomplishing this end, there were still certain individuals who were retarded rather than mentally ill and who were being confined to the wards at the Martin Gross Unit.

41. The balance of patients at Martin Gross varied greatly in their levels of physical, mental and psychological functioning. Some of the patients were physically incapacitated and psychologically deteriorated with little, if any, family contact. There were also those who could take care of themselves and had family contact, but were wither resistant to leaving the hospital, or could not be placed in community care centers because there were an inadequate number of such facilities.

42. During Plaintiff's tenure at Martin Gross Unit, there were efforts made by certain of the staff to open the locked wards in an effort to better prepare the patients for release into the community. The Hospital Administration took the position that the wards had to remain locked because of what they perceived to be the patients' deteriorated state. Plaintiff continually directed

her efforts toward removing the barriers to opening the wards but was constantly rebuffed.

43. During Plaintiff's tenure the Martin Gross Unit was administered by a team known as the Martin Gross Unit Administrative Team, hereinafter "Team." This Team was comprised of three psychiatrists, Defendant Esendal, Drs. Butterbaugh and campo; one Staff psychologist, the Plaintiff; one social service supervisor, Rena Whittaker; and three nursing supervisors, Lorraine Arnold, Judith Nave, and Patricia Rucker. The Team was charged with the responsibility of discussing and recommending administrative changes for the Martin Gross Unit in relation to the rest of the Hospital.

44. As a member of the Team and also during the course of Individual Treatment Plan meetings as described supra, Plaintiff constantly pressed for upgrading the quality of patient care and the environment within which they were required to live. The environment in the various wards at the Martin Gross Unit was lacking in many respects. It was the Plaintiff's desire to improve this environment in the interest of patient care. Accordingly, she sought the assistance of the Team and ward staff to improve ventilation, to remove pungent

order of urine and feces, to meet the dietary needs of the patients, to improve the sanitation and cold and hot temperatures in the wards and made a conscious effort at assisting the staff in changing its attitude toward the chronically mentally ill. In that regard, she made recommendations to raise staff consciousness for equal rights and respect for the human beings in the Martin Gross Unit as well as other units of the Hospital. It was always Plaintiff's desire to have the staff take an integrated treatment approach toward the patient rather than compartmentalize the individual.

45. Although the majority of the team members would agree with the concepts that Plaintiff introduced and advanced, there was always the message that the Hospital Administration (the Defendants) would do what suited their needs best, regardless of the needs of the patients. Several times after those meetings, Plaintiff was summoned to Defendant Esendal's office for a private "friendly" chat. Invariably, those "chats" would become lectures where plaintiff was told by Defendant Esendal that "You are an Armenian woman, your place is in the kitchen and with your son rather than here at the work place ... that if you want to keep your job at

Springfield, you are supposed to learn not to see, hear or even smell anything offensive... you are to forget the cruelty toward the patients, draw your salary and just be glad that you have a job." Plaintiff was also cautioned that if her reports of medical neglect and continued efforts toward change did not cease some harm would come to her. "You will get knifed on the Unit (Defendant Esendal would go through the gestures of knifing the Plaintiff), that your car would be vandalized, and that your career and life would be destroyed by Defendants Book and Krajewski, that other individuals higher up in the state system would cover up the administration's actions and that the Maryland Attorney General's Office would afford them protection for doing so."

46. Repeatedly Defendant Esendal advised the Plaintiff not to rock the boat and that the best policy was to shut her mouth, go deaf and blind, and then she could last in the Maryland State System like he and others had lasted.

47. Plaintiff continued to observe numerous abuses and neglect of patients.

48. Rather than take Defendant Esendal's advice, Plaintiff continued to report the neglect and abuse and actively tried to obtain better medical care for the patients.

49. Of the hundreds of patients for whom the Plaintiff was responsible to provide psychological services, the Plaintiff observed that many of those patients needed the intervention of a physician who could provide a complete medical work-up to assist in the proper diagnosis of patients' symptoms, and determination of whether or not the patients' so-called psychiatric labels were properly arrived at. Plaintiff appropriately requested the intervention and assistance of physicians to rule-in or out presence or absence of certain conditions. However her recommendations for such determinations were largely ignored and the patients continued to regress because of medical negligence.

50. Some of those patients and others who suffered from medical negligence and psychological abuse, were residents of the Martin Gross Unit, the Baltimore City Division, the Warfield Unit, and the Geriatric Unit as follows:

Bernard Finkelstein	Igor Frank (deceased)
a Mr. Chamish	Charles Everhart (deceased)
Benjamin McGuire	Amelia Webb (deceased)
Isiah Massey	David Daniels (deceased)
Calvin Ashbaugh	Alexander Mostovoy
Madessa Cruiz	Jo Ann Adams (deceased)
Nancy Scharf	Michael Wallace
Barbara Peterson	Michael Todd
Willie Rose Dolores Smith	
Anthony Adams	Mark Robinson
George Pruitt	Carolyn Schmitt
James Bean	Hanna Jackson
Rubin Wiggins	Mabel Dillard
Elsa Hess	Mary Jane Scarf
Senora Baytop	Ewel Graham
Gary Thomas	Thomas Creegan
Maurice Epstein	Andrew Swidrowski
Thomas Gibson	

And a presently unidentified female patient from the Geriatric unit (deceased), mentioned in paragraph 54u.

These are patients whose names the Plaintiff can recall presently. Plaintiff is specifically aware of details of two of those cases, Bernard Finkelstein and Igor

Frank, because Plaintiff has had lawful access to these patients' medical records from the Springfield Hospital and other relevant treatment centers where these patients were treated.

51. Plaintiff is aware of many additional neglected patients but cannot presently recall their names. However, Plaintiff can identify those cases if permitted to have full access to patients' medical records.

52. Because the Plaintiff reported medical negligence by Springfield Hospital physicians, and in an effort to cover up their own acts of negligence, the Defendants conspired to vilify, and systematically harass the Plaintiff, in order to eventually force her resignation, and harm her professionally.

53. In order to cover up their own acts of negligence, the Defendants also arranged to have certain patients' charts filled with false information to reflect that the medical care given was adequate.

54. In addition to the serious warnings issued to the Plaintiff by Defendant Esendal as mentioned in paragraphs 45 and 46, the Defendants engaged in the following retaliatory acts against the Plaintiff:

a. In an effort to build their case against the Plaintiff and project an appearance of legitimacy for terminating Plaintiff's employment, the Defendants began to fill Plaintiff's personnel folder with false accusations and charges. For example, in September of 1981, Defendant Book falsely accused Plaintiff of having "problems" in relating to Hospital physicians; he sent carbon copies of these accusations to Defendants Esendal, Pompilo, and Krajewski and Dr. Snyder of the Psychology Department Privileging Committee. What was labeled as "problems" were in fact Plaintiff's lawful efforts to obtain quality medical care for her patients, her reports of medical negligence, while the Hospital physicians rebuffed Plaintiff's efforts to make adequate diagnosis of patients' conditions. Based upon this "unjust labeling," Plaintiff received two unsatisfactory performance ratings in February of 1982 and 1983.

b. Defendant Esendal's previous warnings about Plaintiff's car became a fact. On October 5, 1981, Plaintiff's car was vandalized while parked in front of the Martin Gross Services Building, the location of Defendant Esendal's office. Of all the

parked cars, the Plaintiff's car was the only one vandalized. Plaintiff reported the incident to the Hospital Police and put a sample of the unknown substance, which she still has, in a white Kleenex tissue. Officer Garehart, who investigated the incident, informed the Plaintiff of other incidents of vandalism in other areas of the Hospital in previous weeks. However, those cars had been smeared with patients' feces. October 5, 1981, corresponds with the date when Mr. Igor Frank was transferred to the University of Maryland Hospital for surgery, upon Plaintiff's insistence for a thorough medical work-up.

c. Beginning November 2, 1981, Defendants Pompilo, Book and Bassiri issued repeated oral and written orders to Plaintiff that she provide a detailed written schedule of her activities, whereas there were no legitimate reasons for such requests and no such requests were made of others. These requests were later given the appearance of legitimacy with false comments in Plaintiff's Annual Efficiency Ratings of February 1982 and 1983.

d. Plaintiff complied with these orders, however she filed several grievances and rightfully challenged the Defendants' unfair treatment of her in this and other

respects. Finally, on August 27, 1983, Defendant Book requested that all psychologists provide their schedules to him, all in an effort to appear as though he was treating all psychologists "equally." However, Defendant Book even at that time made an additional request of schedule from Plaintiff. e. Defendants used insidious tactics in an effort to coerce and silence the Plaintiff.

f. Defendant Bassiri offered to put Plaintiff "under his wing and protect" her from harm by Defendants Book, Krajewski and the Attorney General's Office, if she were to just give him sexual favors, drop all her grievances and never again report physicians' negligence. On February 4, 1982, Defendant Bassiri also warned Plaintiff of subjecting her to "isolation treatment" by other employees of the Hospital, thus causing Plaintiff's psychological and professional death, if she continued to report negligence. He, in fact, had subjected Plaintiff to lewd remarks and offensive touching from November of 1981 until January of 1982. Plaintiff not only declined Defendant Bassiri's "protection" in return for sexual offers, she also reported the sexual harassment and continued to strive for better medical care of patients. Plaintiff is aware of at least

one other former female employee of the Hospital, an R. N. and a single parent like the Plaintiff, who was subjected to sexual harassment by Defendant Bassiri and actually lost her position as a result of having declined to render sexual favors to him.

g. Defendant Esendal, on the other hand, offered to give Plaintiff a large office in the Martin Gross Services Building, very little work to do, a promise of continued glowing remarks about Plaintiff's job performance, and would protect her from harm by Defendants Book and Krajewski, only if she would recognize him as her sole supervisor, disregard Defendant Pompilo as her other supervisor, drop all her grievances, approach Defendant Book and tell him that all her reports of medical negligence were nothing but the result of her "impaired judgment," and ask for forgiveness from Defendant Book. Plaintiff declined to accept this "protection" presented in the form of racketeering tactic.

h. In December of 1981, Defendant Esendal, with no legitimate reason, restricted Plaintiff's clinical privileges. He forbade her to consult with patients unless they were specifically referred to her by a

psychiatrist, forbade her to read or make entries in the patients' medical chart except for those patients referred by psychiatrists, and thus refused Plaintiff access to certain wards. Meanwhile Plaintiff received no referrals from psychiatrists. This was an effort to create the appearance that Plaintiff was not doing her job and to legitimize the unsatisfactory performance ratings of 1982 and 1983, executed by some of the Defendants. Two consecutive unsatisfactory Annual Efficiency Ratings have been used as the main basis for termination of employees in the Maryland State System.)

i. On January 7, 1982, Defendant Esendal threatened Plaintiff with expulsion from the Hospital. He indicated to her that members of another hospital staff who, like her, had tried to change the system, had been murdered. He also gave her a press article entitled "Allen Finally Takes the Hint." This was an article about President Regan's aid who, because of his errant ways, was expendable and who took the hint and finally resigned. He also indicated to Plaintiff that the Hospital Administration (Defendants Krajewski and Book) would get rid of her and block her licensing. Plaintiff immediately requested transfer from the Martin Gross

Unit away from the supervision of Defendant Esendal, and reported the death threat to the Maryland State Police on January 8, 1982. Plaintiff was denied all options for transfer and was left with either accepting Defendant Bassiri's supervision or resigning. Plaintiff was ordered transferred to the Baltimore City Division on February 22, 1982.

J. Defendant Esendal also approached Dr. Beth Dzaman, then under Plaintiff's supervision, and tried to negatively influence the supervisee against the Plaintiff.

k. Defendant Pompilo frequently met with Plaintiff and asked her to stop reporting medical negligence. He also informed Plaintiff that if she continued her efforts to obtain better medical care for patients, Defendants Krajewski and Book would destroy her career, block her licensing, and that the Attorney General's Office would afford them "protection." In addition, he tried to convince Plaintiff to resign for her own protection.

l. Sometime in the Spring of 1982, Mr. Martin Whitcomb, a concerned citizen who has been aware of widespread patient neglect in the State Institutions of Maryland, contacted Defendant Sandra Leichtman to

request her intervention to relieve Plaintiff of administrative harm. In response she implied that Plaintiff's credentials were phony and that she and the rest of the Administration would assure that Plaintiff never practiced psychology again.

m. Reprisals against Plaintiff for related First Amendment activities in 1982 are as follows:

(1) On February 12, 1982, Plaintiff filed a written complaint under the Maryland Classified Employees Disclosure Act (codified at art. 64A, Section 12G(a), Maryland Code). The complaint alleged different harassments by Hospital officials for Plaintiffs communications regarding the medical negligence as described above. Copies of the complaint were supplied to the Hospital administration, and the Attorney General's Office for investigation. On or about February 25, 1982, defendants Pompilo, Esendal and Book, meeting together, composed an unsatisfactory performance appraisal of Plaintiff, which was issued to her. The Maryland Attorney General's Office did not contact the Plaintiff to investigate either the harassment or the medical negligence; instead it assumed the defense of the

Defendants who had violated both the patients' and Plaintiff's rights.

(2) In late May 1982, Plaintiff testified before a Finance Committee of the Maryland legislature, on behalf of an amendment strengthening protection of state employees who made disclosures under the Disclosure Act. On June 22, 1982, Defendant Pompilo recommended revocation of Plaintiff's full privileges and imposition of special supervision for three months on all aspects of Plaintiff's professional practice and relationships although he had all along praised her for her competence and high ethical conduct. On that date, Pompilo also denied Plaintiff a promotion due in August of 1982.

(3) During February and March of 1982, Plaintiff filed EEOC complaints with the Hospital Affirmative Action Officer and the Federal EEOC Office. The Hospital attempted to get Plaintiff's signature waiving any right to sue it while the Federal EEOC Office issued a Notice of Right to Sue on July 12, 1982.

n. On April 22, 1982, Defendant Bassiri, then Plaintiff's immediate supervisor, established a special leave authorization procedure for her.

o. Defendant Philip Townsend, the Hospital personnel chief, attempted to suspend Plaintiff on May 12, 1982, at Defendant Bassiri's instigation based on a false accusation.

P. Bassiri and Book pressured psychiatrist Mattegunta of C-1, to constantly criticize Plaintiff from May to September 1981. On the day of her transfer to another Unit, Mattegunta informed Plaintiff of this.

q. Beginning in August of 1982 Defendants Krajewski, Book and Leichtman repeatedly attempted to impose special supervision on Plaintiff prior to a decision by the Hospital Privileging Committee, which had jurisdiction of the matter. In fact, Plaintiff was assigned 12 supervisors while all other psychologists were responsible to only two.

r. In late August or early September of 1982 Defendant Regan revoked second-year funding of Plaintiff's grant though he had approved it for funding as of August 8, 1982. Revocation occurred within one week

after Defendant Krajewski was informed of the approval and funding.

s. In August 1982 Plaintiff, through counsel, reported a female patient's death from the Geriatric Unit, which had just occurred and involved possible medical negligence, while Defendant Krajewski ignoring the report threatened Plaintiff that he would punish her if she failed to disclose information of negligence or abuse of patients.

t. Removal during Plaintiff's absence for illness in September 1982, of sliding bolts in Plaintiff's private office by Defendant Park assisted by other C-2 ward staff, so that her office could be entered by patients or staff at any time. It is believed that this action was instigated by other defendants in collaboration with Defendant Park, to distress Plaintiff and to foment trouble between her and ward staff. This incident led to the ward meeting of October 6, 1982, which is discussed in the next paragraph.

u. On October 4, 1982, Defendant Krajewski ordered Plaintiff to attend a staff meeting convened specially by him for Plaintiff to answer eleven (11) trumped-up charges against her.

Defendant Krajewski told Plaintiff she had better say the charges were untrue, "or else." He denied Plaintiff's request for a representative of her choice or an attorney at the meeting, and threatened her with suspension if she did not attend. Plaintiff attended the meeting, held October 6, 1982, and became ill and was absent from work for more than two weeks. Both Dr. Krajewski and Plaintiff tape recorded the meeting.

v. Recovation of Plaintiff's full privileges in October 1982, by Defendant Jolbitado, chair of the Hospital Privileging Committee, in the absence of any rationale or evidence supporting Defendant Pompilo's recommendation against full privileges and despite recommendation by the Psychology Department Privileging Committee that Plaintiff's full privileges be continued.

w. Service on Plaintiff of administrative notices, in May and September of 1982, by two armed hospital officers, in the middle of group therapy sessions conducted by Plaintiff, at the direction of Defendant Townsend.

x. From October 1982 on, Defendant Park began to accuse Plaintiff both in private and in team

meetings, of being "unable to communicate," although she communicated very clearly and precisely. This was an effort to create the appearance of a pattern of "communication problems" which Plaintiff was supposedly having with staff.

y. On or about January 27, 1983, Defendant Book was responsible for issuance of an Annual Efficiency Rating for plaintiff, which had an overall unsatisfactory rating, although work quality and quantity were rated satisfactory. The only known explanation for this rating was a pejorative untruthful evaluation draft by Defendant Park, and Defendant Book's own preferences.

All other written evaluations considered for the final rating by Drs. Choi and Campo were either satisfactory or superior. Subsequently the psychiatrist who rated Plaintiff superior was harassed, as were other employees who were supportive of Plaintiff.

z. In about early February 1983 Defendant Roberts summoned Plaintiff to his office and inappropriately questioned her to elicit information sought by the original defendants' attorneys: the nature of her background; whether she had relatives in Iran about whom she might be concerned; whether such

relatives were affected by the hostage crises; her "philosophy" of treatment;" whom she lived with; her legal claims in the instant lawsuit; etc. He also questioned her regarding her schedule and whereabouts.

aa. Beginning late February 1983 Defendant Randy Roberts, Director of Springfield's Psychology Department, subjected Plaintiff to unusual scrutiny.

bb. On or about March 14, 1983, Defendant Roberts, in an effort to appear legitimate, instructed the psychologists as follows:

(1) All unlicensed psychologists (Plaintiff is unlicensed but is highly experienced and eligible for licensing in Maryland) are to receive direct supervision on a continuing permanent basis from licensed psychologists. Defendant Roberts then sent Plaintiff a series of memos concerning this requirement. The requirement was in contradiction of Hospital Medical Staff Bylaws privileging conditions.

(2) Defendant Roberts then directed the Psychology Department Privileging Committee to write the new supervision requirement into its guidelines for privileging; Dr. Roberts thus violated the prerogatives of that elected committee, and its written policy of

self-governance, in order to give his policy the appearance of legitimacy.

(3) Defendant Roberts stated that only licensed psychologists could supervise interns in the future. This constituted an abrupt break with prior Hospital practice whereby Plaintiff and other licensed Ph.D. or M.A. psychologists with experience did supervise interns.

(4) That he expected all unlicensed psychologists to become licensed within one year. Such a requirement was and is in violation of state statutes concerning licensing, of state position requirements for psychologists, and of the terms of Plaintiff's employment. This requirement undermined Plaintiff's professional status since it was extremely unlikely Defendants would permit her licensing to occur, as she had been previously warned.

55. Thereafter, in the spring and summer of 1983 until Plaintiff's forced resignation, Defendants Randy Roberts and Daniel Malone "trumped-up" phony supervisory sessions in an effort to obtain information in connection with her lawsuit, in an effort to further harass her, and in an effort to document her personnel file with

"justification" for suspensions without pay and termination. As a result, Plaintiff has been unemployed since July 1983.

56. In taking their actions, each of the defendants was aware of the plan to harass Plaintiff for exercise of her Constitutional and state rights of speech, and agreed to participate.

### CLAIMS

57. In doing the things and acts above complained of while clothed in the authority of state officials, Defendants acted under color of state law. They maliciously engaged in a scheme and conspiracy designed and wrongfully intended to deny and deprive Plaintiff of rights guaranteed by the First, Fifth and Fourteenth Amendments to the Constitution. In so doing they violated 42 U.S.C. Sections 1983, 1985, 1986, 1988 and 1997(d). Plaintiff has suffered grievous professional and pecuniary damage as a direct result of Defendants' actions. She is entitled to equitable relief and monetary damages under 42 U.S.C. Sections 1983 and 1985,

58. In doing the things and acts above complained of Defendants breached their duty to Plaintiff to

administer the Hospital without taking reprisals against her and eventually forcing her to resign. As a result of these actions and statements, motivated by wrongful intent, Plaintiff has variously feared for her life, her job and her professional reputation. She has suffered severe damages as a direct result of Defendants' course of conduct. Plaintiff is entitled to monetary damages under Maryland tort law for this harm.

59. In pursuing the above course of conduct, Defendants have knowingly engaged in a conspiracy to deprive Plaintiff of rights guaranteed by the U.S. Constitution and by the Maryland Classified Employees Disclosure and Confidentiality Protection Act, Art. 64A Section 12G of the Maryland Code. Defendants have thus breached their duty to Plaintiff to refrain from violating her rights under federal and state law. Plaintiff has suffered pecuniary and professional harm as a direct result. Plaintiff is entitled to monetary damages under Maryland tort law for the Defendants' conduct based upon wrongful intentions and for their malicious interference with her duties and responsibilities as a clinical psychologist.

60. By their foregoing actions, the Defendants have knowingly interfered with Plaintiff's contractual employment rights with the Hospital and State, causing Plaintiff to lose her full privileging status, her promotion, and causing two unsatisfactory performance appraisals to be issued about her, jeopardizing her employment. Furthermore, as a result of these actions Plaintiff has been and is unable to obtain suitable employment.

61. The words, gestures and touching by Defendant Bassiri constitute tortious assault and battery; Defendant Bassiri is also included in other claims, for these and other cited actions by him.

62. Defendants Buck and Thornton are liable for permitting all of these actions, and in not properly supervising the conduct of the other defendants.

### RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

1. Enter a judgment that the acts and practiced complained of herein are in violation of 42 U.S.C. Sections 1983, 1985, 1986, 1988 and 1997(d), U.S. Constitution, Maryland Code Art. 64A, and Plaintiff's rights under Maryland tort law.

2. Order Defendants to grant Plaintiff back pay with promotion to Psychologist III, steps and yearly increments due, pay for eight days of suspension, and benefits which were wrongfully removed.

3. Order the Defendants to purge all Hospital records of mention of Defendants' illegal actions, statements, and their negative results, including the February 1982 and 1983 performance appraisals and the charges which resulted in suspensions without pay.

4. Order defendant individuals jointly and/or severally to pay Plaintiff \$5,000,000 in compensatory and punitive damages.

5. Order individual defendants and/or defendant Hospital to pay Plaintiff's attorneys' fees and costs, pursuant to 42 U.S.C. Section 1988 and the Court's equitable powers, in the interests of justice.

6. Grant Plaintiff such additional relief as the Court may deem just and proper.

**PLAINTIFF DEMANDS TRIAL BY JURY.**

Respectfully submitted,

Soughik Kayzakian  
Plaintiff, Pro Se  
(301) 795-4179

VERIFICATION

I have read the foregoing and verify, under penalty of perjury, that it is correct, to the best of my knowledge and belief.

/S/Soughik Kayzakian  
Soughik Kayzakian

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

SOUGHNIK ('SONIA') KAYZAKIAN :

v. : CIVIL NO. K-82-3141

THOMAS F. KRAJEWSKI, ETC., ET :  
ALMEMORANDUM & ORDER

During a hearing in open court on the record held on February 21, 1984 and a conference on the telephone on the record held February 22, 1984, counsel for plaintiff informed this Court that plaintiff was seeking to dismiss the within case without prejudice, but that if this Court would not grant plaintiff's said motion to dismiss without prejudice, plaintiff in any event did not desire the within case to go to trial without further amendment of plaintiff's complaint to add additional defendants and to add additional allegations. Plaintiff's desire so to amend is repetitive of earlier similar or substantially similar quests on behalf of plaintiff which have been opposed by defendants and which this Court, after hearing from counsel on both sides, has denied. Those denials by this Court are hereby affirmed and confirmed for reasons which have been stated by this Court either in writing or orally on the record at one or more times.

Trial of this case has been scheduled to commence on Monday, February 27, 1984 since at least as early as December 15, 1983. Statements of counsel for plaintiff, on the record, with regard to Plaintiff's decision not to proceed to trial on the basis of plaintiff's present amended complaint have been made orally.

This Court instructed counsel for plaintiff, during the aforementioned February 22, 1984 telephone conference, to state that position by plaintiff, in writing, in appropriate form, and to submit same to this Court, not later than 5 p.m. today, February 23, 1984. This Court also afforded to counsel for defendants the opportunity to respond in writing to any such submission by plaintiff on or before noon on February 24, 1984.

Counsel for defendants, in oral statements to this Court on the record, and in a written submission, has opposed the grant by this Court of plaintiff's quest for dismissal without prejudice, regardless of any conditions attached to the same and contends that the dismissal should be fully with prejudice.

Counsel for plaintiff has stated that plaintiff intends to file a new case in this Court, in which plaintiff will set forth in her complaint all of the allegations she desires

to state, including those which this Court has not permitted plaintiff to state by amendment, and to name in such complaint all of the defendants plaintiff desires to name, including defendants who are not defendants in the within case and who plaintiff has attempted unsuccessfully to add prior to this date as defendants in the within case.

Tentatively, as of this date, prior to receiving the written submissions referred to hereinabove from counsel on either or both sides later today, February 23, 1984 or tomorrow, February 24, 1984, this Court expects, before determining whether to dismiss the within case with or without prejudice, to grant to plaintiff the opportunity to file a new case on or before March 12, 1984 and to inform this Court in writing, on or before that same date, namely, March 12, 1984, whether plaintiff is able to post a bond in the minimum amount of \$10,000.00 to reimburse defendants for such costs and expenses, if any, as defendants may incur because of the need for repetitive work and proceedings in the new case which would not have occurred had plaintiff proceeded timely in the within case. This Court notes that counsel for defendants claims that such additional costs and expenses

will be far in excess of \$10,000.00 and that plaintiff has in no way conceded that there will be any such additional costs and expenses, or that if there are any such additional costs and expenses, plaintiff should be required to bear the burden of the same. In those connections, both sides will be afforded full opportunities to be heard. However, as of this date, on a tentative basis, this COurt believes that it is quite possible that such additional costs and expenses would total \$10,000 or more.

If plaintiff files any such new case on or before March 12, 1984 and desires to continue to pursue her quest for the within case to be dismissed without prejudice, counsel of record in this case for plaintiff will be required to state in writing on or before 3/12/84 that he has good reason to believe that plaintiff can post such a bond in a minimum amount of \$10,000 with the full understanding that, in effect, such bond will be a guarantee of payment by plaintiff of additional costs and expenses of defendants which it is quite possible will be incurred. If plaintiff does not file a new case on or before March 12, 1984 and/or does not, through her attorney, provide this Court with the type of assurance

indicated above with regard to the posting of bond, this Court, as of this date, on a tentative basis, expects to dismiss the within case with prejudice as promptly after March 12, 1984 as this Court's calendar permits. If, on the other hand, plaintiff does not file a new case on or before March 12, 1984 and also provides the required assurance as to bond, this Court will afford to both sides further opportunity fully to be heard concerning whether the within case will be dismissed with prejudice or without prejudice, and if without prejudice, on what conditions, if any.

As of this date, this Court will not enter any final Order in this case but does note, that on a binding basis, plaintiff has committed herself not to proceed further in the within case and has stated, on a binding basis, that the within case should be dismissed. Of course, if the within case is dismissed with prejudice, rather than without prejudice as plaintiff desires, plaintiff will, after a final Order to that effect is entered by this Court, have the right to appeal. By way of contrast, if this Court should enter a final Order dismissing the within case without prejudice, defendants will have such rights, if any, to appeal as may be provided by law.

Attached hereto is a letter dated February 21, 1984 to this Court from J. Frederick Motz, Esq., along with letters dated February 19, 1984 from Martin F. Whitcomb and Romaine B. Whitcomb addressed to this Court. The written comments of Ms. Meredith with respect to the same are requested on or before March 1, 1984 and of Mr. Marr on or before March 8, 1984.

The Clerk is directed to send copies of this Memorandum and Order to counsel of record and to Mr. and Mrs. Whitcomb.

It is so ORDERED, this 23rd day of February, 1984.

S/Frank A. Kaufman  
CHIEF UNITED STATES DISTRICT JUDGE

**STATUTE AND RULE PROVISIONS****TITLE 42, UNITED STATES CODE****42 U.S.C. Section 1983. Civil action for deprivation of rights**

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

\*\*\*\*

**Federal Rules of Civil Procedure****Rule 15. Amended and Supplemental Pleadings**

\*\*\*\*

(d) **Supplemental Pleadings.** Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit the party to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. Permission may be granted even though the original pleading is defective in its statement of a claim for relief or defense. If the court deems it advisable that the adverse party plead to the supplemental pleading, it shall so order, specifying the time therefor.